



2026:CHC-AS:986-DB

Form No. J(1)

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION**

Present :

**The Hon'ble Justice Rajasekhar Mantha
And
The Hon'ble Justice Biswaroop Chowdhury**

C.R.A. 498 of 2017

**Aloke Ghosh
Versus
The State of West Bengal**

With

C.R.A. 511 of 2017

**Gopal Mistry
Versus
The State of West Bengal**

For the Appellants : Mr. Avishek Sinha
Ms. Madhusree Banerjee.

For the Appellants : Mr. Anirban Mitra
(On behalf of High Court
Legal Services Authority)

For the State : Mr. Pradip Banerjee, A. P.P.
Mr. Arijit Bhusan Bagchi.

Heard on : 07.07.2026.

Judgment on : 07.07.2026.

Rajasekhar Mantha, J.:

1. The subject appeal is directed against the judgment and order of conviction dated 10th July, 2017 and sentence dated 11th July, 2017



passed by the learned Second Additional Sessions Judge, Sealdah in Sessions Trial No. 02(01)/2010 arising out of the Sessions Case No. 05(09) of 2009. The appellants were convicted under Sections 328/34 of the IPC for 7 years, under Sections 379/34 of the IPC for 3 years, under Sections 307/34 of the IPC for 10 years and under Sections 302/34 of the IPC for life.

THE PROSECUTION CASE:

2. The case reveals a sordid saga of the appellants causing the death of a targeted victim of theft and robbery on a train. To say that the investigation in this case was inadequate if not halfhearted would also not be out of place. The failure on the part of the Investigating Officer was primarily the inability to collect the FSL report of the viscera of the deceased victim passenger. There is no evidence to indicate that the viscera was at all sent for FSL even the medical reports and bed head tickets of the surviving victim were not collected by the Investigating Officer from the hospital concerned. The lapse on the part of the Investigating Officer PW-14 is rather inexcusable.

3. The other serious lapse is that of PW-4, the Traveling Ticket Examiner (TTE). The serious dereliction of duty of the said TTE PW-4 and the other TTEs preceding PW-4 and succeeding him all the way to Sealdah Station while on duty aboard Teesta Torsa Express being No. 3142 Down NJP to Sealdah is a matter of grave and serious concern.



TTEs often allot berth at the earnest request of passenger who willingly pay money therefor.

4. The aforesaid lapses of the TTEs in the Indian Railways is primarily the reason for the crime in question to have occurred. The death of one of the victims may not have been intended by the appellants or his associates.

5. There is, however, strict liability on a person who seek to administer medication to drive a person out of sense to steal from him. Such person may not be in a position to withstand the psychotropic substance administered on him, due to persisting co-morbidities. All this for petty theft and robbery.

6. The shocking incident occurred on the 23rd of February, 2009 on a running train being the aforesaid Teesta Torsa Express, running between New Jalpaiguri Station and Sealdah.

7. Two passengers boarded the train with an unreserved ticket as per the practice they are used to. They found berths after bribing the TTE concerned. They were Arun Chakraborty, who luckily survived and Sunil Kumar Das, who was not so lucky. Both of them were found in a semi-conscious sleepy condition on the berth of Coach S-8 of the said Train. They were discovered in such condition by PW-5 and PW-6, Head Constable of GRP at Sealdah Station. While they were being removed for medical attention, Sunil Kumar Das was found dead due to an unknown



poison. The other victim Arun Chakraborty survived after nine days of hospitalization. Upon being informed strangely the Railway Police did not register a formal FIR. FIR was registered on the complaint of GRP, namely, PW-1, Pranab Kumar Mitra initially with Sealdah GRPS as FIR 16 of 2009 dated 23rd February, 2009. A second FIR was lodged on the complaint of the son of the deceased passenger, Sunil Kumar Das, by Entali Police Station.

8. The investigation was taken up by PW-14, namely, Satyajit Banerjee. The case being difficult to investigate did not prevent the Investigating Officer of the case from committing lapse after lapse. While inquest to the body of the deceased was performed at NRS Hospital at Calcutta, nobody bothered to collect the viscera of the deceased and sent it for forensic analysis. The Investigating Officer of the case thought it enough to collect Post Mortem report of the deceased. After about three months of the survivor, Arun Chakraborty being released from Hospital, a photograph of the appellants herein is stated to have been taken out of the police records wherefrom the survivor identified an appellant.

9. A T.I. Parade was conducted where the survivor identified one of the appellants, namely, Aloke Ghosh. He was taken into custody. Several months thereafter the survivor was called to the Criminal Investigation Department, West Bengal Office at Bhabani Bhawan in Calcutta where he is stated to have given description of the second appellant, Gopal



Mistry. A portrait was prepared, Gopal Mistry was traced out and a leading statement was recorded under Section 27 of the Evidence Act. In such statement he has also confessed to having committed the crime along with the appellant Alope Ghosh. Indeed it is true that such confession is not admissible in evidence and the crime is required to be formally proved.

10. In course of evidence in the Trial Court, seizure witnesses of the personal effects of the deceased Sunil Kumar Das could not identify any of the articles therein. The stolen articles of the deceased were recovered from the house of Gopal Mistry. Curiously a wrist watch appears to have been recovered both at the house of Gopal Mistry as also the place of occurrence. PW 5, the sole witness of the alleged seizure of the stolen articles of the deceased has deposed before the Court that he found the articles in a Police Van and was made to sign on a blank document.

11. What appears to have been very sketchily established is the participation of the two appellants in regularly stealing and robbing from passengers on trains running between New Jalpaiguri and Sealdah. The modus operandi evident is befriending gullible passengers offering them foods and drinks laced with heavy dose of sleeping medication. After the victim fell asleep they are stripped of all valuables and are left to their fate. In the instant case the fate of one such victim passenger resulted in death due to several comorbidities that he was already having.



12. While it is true that any conviction or deprivation of the liberty under the penal law is required to be in accordance with the Rules prescribed under the Code of Criminal Procedure and the Law of Evidence, this Court has no hesitation to hold that the appellants committed the offence with complete disregard for the law, life and liberty of a human being must be dealt with strictly and in a deterrent manner.

13. The hands of the Court are however, tied due to the fact that the appellants' motive was only to steal. The methods employed to say the least could have far reaching consequences as in this case i.e. to end of the life of a gullible passenger.

14. This Court is of the view that the ingredients of Section 302 of the I.P.C. are not even remotely attracted. The appellants could have at best been convicted under Section 328 of the I.P.C.

15. This Court, however, is constrained to refer a copy of the judgment to the General Manager of the Eastern Railway and other Railways in the country to ensure the maximum available penalties for Travelling Ticket Examiners who sell empty berths in a trains like vegetables in a market. Such conduct that has resulted in the unfortunate death of one of the passengers who was only a victim of theft.

16. There are several cases galore not reported that have, in fact, resulted in very serious medical consequences for victims of petty theft.



The origin of such crimes is in the hands of the Travelling Ticket Examiners as already indicated above.

17. For the several loopholes in the investigation and the prosecution case indicated hereinabove, it is expected that the police authorities take more sincere, diligent and devoted steps to conduct investigation so that life and liberty for travelling passengers is more secure in Indian Railways.

18. Having regard to the discussion made hereinabove, this Court is of the view that the appellants could at best be convicted for seven years as held by the Trial Court under Sections 328 of the I.P.C. The charges under the other sections framed against the appellants are clearly not proved.

19. It is submitted by the counsel for the appellants that both of them are on bail after serving ten and sixteen years respectively.

20. The appellants are set at liberty forthwith from the custody, if not wanted in any other case, upon execution of a bond to the satisfaction of the Learned Trial Court, which shall remain in force for a period of six months under Section 437A of the Code of Criminal Procedure corresponding to Section 481 of the BNSS, 2023.

21. The appeals are allowed in part.



22. Let a copy of this judgment be sent down to the Court below for information.

23. Trial Court records along with copy of this judgment be sent down at once to the learned Trial Court for necessary compliance.

24. Urgent Photostat certified copy of this judgment, if applied for, be furnished to the parties expeditiously.

(Rajasekhar Mantha, J.)

(Biswaroop Chowdhury, J.)