

*Before Mr. Justice Burkitt.*

EMPEROR v. RAMADHIN.\*

1902  
August 29.

*Act No. XLV of 1860 (Indian Code), section 378—Theft—Human body not capable of being the subject of theft.*

*Held* that a human body, whether living or dead (except perhaps bodies, or portions thereof, or mummies, preserved in museums or scientific institutions), cannot be the subject of theft as defined in section 378 of the Indian Penal Code.

THE facts of this case sufficiently appear from the order of the Court.

Mr. C. C. Dillon, for the applicant.

The Assistant Government Advocate (for whom Munshi Gokul Prasad), for the Crown.

BURKITT, J.—This is an application in revision on behalf of one Ramadhin, who has been convicted on a trial by jury of an offence punishable under section 379 of the Indian Penal Code, and sentenced to two years' rigorous imprisonment. As under section 418 of the Code of Criminal Procedure an appeal lies in a case like this on a matter of law, I have treated this application as if it were a memorandum of appeal. The first ground taken and urged by the learned counsel for the applicant is that the facts proved disclose no offence punishable under section 379 of the Indian Penal Code. The facts are that one Bhairo, an elderly man, had sustained injuries at the hands of the applicant, which are said to have caused his death the next afternoon. That night, while the body was lying outside the house of the mother of the deceased waiting to be taken to the river, the applicant with some other men came up, seized upon the corpse, carried it off, and threw it into the river. It is alleged that the object of this act was to prevent its being ascertained whether the deceased had died in consequence of the injuries inflicted on him by the applicant. Anyhow, on the above facts, the applicant was committed for trial, and was tried by a jury on a charge under section 380 of the Indian Penal Code, afterwards altered into one under section 379 of the Indian Penal Code, and being convicted on the latter charge he was sentenced to two years' rigorous imprisonment. In his charge the learned Sessions Judge told the jury that if they

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found that the accused, ~~that~~ <sup>that is</sup> the applicant here, had the body taken off without the consent ~~of the~~ <sup>of the</sup> mother of the deceased, they should find the accused ~~guilty~~ <sup>guilty</sup> of the offence of theft. The jury unanimously found a verdict of guilty.

Now it is urged by the learned counsel for the applicant that the facts found do not disclose an offence punishable under section 379 or 380 of the Indian Penal Code. In my opinion that contention is sound and must be sustained. The law in England is that there can be no property in a human being, whether living or dead, and that therefore stealing a corpse is not larceny, though it might be punishable as an offence against public decency. I know of no case in which a contrary view has been expressed in this country, and indeed I may say I know of no case, nor has any been cited to me, in which the question was raised in British India. Looking at the definition of the word "theft" as contained in section 378 of the Indian Penal Code, it is difficult to understand how the deceased here, an elderly man about fifty years of age, could be considered to have been "movable property" in "the possession of" his mother during his life-time. If then he was not such property so possessed when alive, I fail to see how on his death his corpse became "movable property in possession of" his mother. And further, with reference to the definition of the word "dishonestly," I am unable to see any "dishonest taking" in the removal of the corpse. I take it that the law on this question is the same in British India as in England; and as in England a human body, whether living or dead, cannot be the subject of larceny, so in India I hold that a human body, whether living or dead, cannot be the subject of "theft" as defined in the Indian Penal Code. These observations do not, of course, include the case of human bodies, or portions of such, or mummies, preserved in museums or scientific institutions. A different rule would probably be applicable to them. For the above reasons I accept the contention of the learned counsel that the facts of the case do not disclose the commission of the offence of theft. The conviction and sentence of two years' imprisonment are therefore set aside.