HUMAN RIGHTS COMMITTEE

Seerattan v. Trinidad and Tobago

Communication No. 434/1990

17 March 1994

CCPR/C/50/D/434/1990*

ADMISSIBILITY

Submitted by: Lal Seerattan (represented by counsel)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 17 December 1990 (initial submission)

Documentation references: Prior decisions: Special Rapporteur's rule 86 decision, dated 6 December 1991, and Special Rapporteur's rule 91 decision, dated 4 December 1992 (not issued in document form)

Date of present decision: 17 March 1994

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Lal Seerattan, a Trinidadian citizen currently detained at the State Prison in Port of Spain, Trinidad and Tobago. He claims to be a victim of violations by Trinidad and Tobago of article 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

The facts as submitted by the author

2.1 The author states that, on 27 December 1982, he was arrested and taken into custody in connection with the murder, on 26 December 1982, of one Motie Ramoutar; on 28 December 1982, he was charged with the murder. The author further states that, on 29 August 1983, after the

preliminary hearing which lasted eight months, the murder charge was reduced to manslaughter by the Examining Magistrate, and that he was released on bail. On 18 September 1984, he was re-arrested on a murder charge. 1/ He was tried in the High Court of Port of Spain between 9 and 11 March 1986, was found guilty as charged and sentenced to death.

2.2 The prosecution relied mainly on evidence given by the son and the wife of the deceased. The deceased's son testified that when he and his parents returned home at about 7 p.m. on 26 December 1982, his father's employee, one B., was standing in front of the author's house; he was apparently drunk and shouting threats at the author and his family. When his father sought to pacify Mr. B., the author's wife came out and told his father that he was responsible for B.'s misbehaviour. The deceased's son further testified that he then saw the author running out of the house, holding a harpoon-like piece of iron, and chasing his father, whose escape was blocked by a fence. The author stabbed his father several times and then ran away. His evidence was in essence corroborated by his

2.3 The pathologist testified that the injuries of which the deceased died could have been inflicted with the weapon that had been described by the eye-witnesses.

2.4 The author gave sworn testimony and indicated that he was relying on a cautioned statement which he had given to the police on 27 December 1982. In that statement the author had said that B. and one J. (who had also been present at the locus in quo) had thrown stones at his house, that B. had threatened him, and that he had asked the deceased to take B. home. The deceased had then tried to pacify B.. When B. and the deceased had started to fight, he and his family had left and had spent the night at the house of one S. P.. He further testified that relations between himself and the deceased and his family had always been cordial.

2.5 The author's wife, who testified on his behalf, gave a different version of the incident. She stated that B. and the deceased had insulted her, and that the deceased and his family had thrown stones, after which she and her husband had left. She denied that her husband had been out in the street that night, as she had said in her earlier statement to the police. In light of her evidence, the judge also put the issue to provocation to the jury. Another witness appeared on the author's behalf, but his testimony was of no particular significance to the case, as he had only heard the noise outside and could not say who were the persons involved.

2.6 The Court of Appeal of Trinidad and Tobago dismissed the author's appeal on 9 March 1987. His petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 26 May 1988. On 3 December 1992, a warrant for the execution of the author on 8 December 1992 was issued. On 7 December 1992, attorneys in Trinidad and Tobago filed a constitutional motion on behalf of the author, mainly on the ground that executing the author after such prolonged delay would violate his constitutional rights. The author was given a stay of execution pending the outcome of a constitutional motion in another case which concerned the same issue.

2.7 On 4 January 1994, the author was informed that his death sentence had been commuted to life imprisonment by order of the President of Trinidad and Tobago, as a result of the findings of the Judicial Committee of the Privy Council in the case of Earl Pratt and Ivan Morgan v. the Attorney-General of Jamaica. 2/

The complaint

3.1 The author claims that his attorney did not represent him adequately and that, as a result, his trial was unfair. 3/ He states that he had wanted to admit the crime and defend himself by invoking legitimate self-defence on account of three full years of provocation that preceded the crime in which the deceased and his family had, among other things, beaten his daughter. He points out that, by pleading guilty to manslaughter at the preliminary hearing, he had already admitted the crime but that at the trial his attorney "took him off the scene" by basing the defence on alibi. He complains that his attorney never challenged the absence of forensic evidence before the High Court, that he did not verify what his wife had previously said to the police, and that he did not raise any objections against the absence of the photographer (who had taken pictures of the locus in quo). 4/ The author further complains that his attorney simply abandoned the appeal, as he did not argue any grounds of appeal on his behalf. 5/ In this context, the author adds that despite this, "he (the attorney) still had the guts to tell the chief Justice that I am already in prison and if he (the chief Justice) could give me a five years prison term because my case was really one of provocation."

3.2 Counsel, in his reply dated 25 September 1991 to a request for clarifications from the Committee's Special Rapporteur for New Communications, submits that there are several factors in the author's case which give reason to believe that he did not receive a fair trial. With regard to the absence of scientific evidence at the trial, counsel concedes that it is open for the defence to comment on the absence of such evidence in order to undermine the prosecution case, but that the defence would normally not demand that it be produced. The absence of scientific or other evidence was however of particular importance in the author's case, since the prosecution's case rested entirely upon the identification of the author by the deceased's son and wife in conditions of partial darkness and when one of those witnesses (namely the wife of the deceased) had poor eyesight and was not wearing her glasses. Furthermore, given the witnesses' close relationship to the deceased and the history of bad relations between the two families, there was ample reason to question the reliability of the witnesses. Counsel further submits that in these circumstances the judge ought to have warned the jury to be cautious. Instead, the judge said: "I do not think [...] that you would have any difficulty in the identification of the people involved." According to counsel, this amounted to a misdirection which resulted in an unfair trial. In this context, reference is made to the petition for special leave to appeal to the Judicial Committee of the Privy Council, which was based on the issue of identification.

3.3 Counsel further points out that crucial witnesses in the case, like B., J. and S.P., were not called to court to testify, and that there was a delay of more than three years between the author's arrest and the trial. He submits that such a delay is particularly undesirable in cases in which identification by witnesses is the main issue. The above is said to amount to violations of article 14 of the Covenant.

The State party's information and observations

4. By submission of 10 September 1993, the State party confirms that the author has exhausted all domestic remedies in his criminal case.

Issues and proceedings before the Committee

5.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 87 of its rules of procedure, decide whether or not it is admissible under the Optional Protocol to the Covenant.

5.2 The Committee notes that the State party does not object to the admissibility of the communication. Nevertheless, it is the Committee's duty to ascertain whether all the admissibility criteria laid down in the Optional Protocol have been met.

5.3 The Committee notes that part of the author's allegations relates to the evaluation of evidence and to the instructions given by the judge to the jury. The Committee reiterates that it is in principle for the appellate courts of States parties to the Covenant, and not for the Committee, to evaluate facts and evidence in a particular case. Similarly, it is not for the Committee to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions to the jury were clearly arbitrary or amounted to a denial of justice, or that the judge manifestly violated his obligation of impartiality. The material before the Committee does not show that the trial judge's instructions or the conduct of the trial suffered from such defects. This part of the communication is therefore inadmissible under article 3 of the Optional Protocol.

5.4 On the basis of the material before the Committee, there is nothing to support the author's contention that he was not adequately represented during the trial and on appeal. In particular, the Committee notes that, during the trial, the author himself chose to rely on the statement he had given to the police, and in which he himself, on 27 December 1982, raised an alibi defence. Furthermore, the Committee notes that the author himself testified in court that "the relationship with the Ramoutar family was a friendly one", and that as far as he knew there was no friction between his and the deceased's family. In the circumstances, the author cannot blame the attorney for not having based the defence on provocation. In this respect, therefore, the author has no claim within the meaning of article 2 of the Optional protocol.

5.5 The Committee further considers that counsel failed to substantiate, for purposes of admissibility, that the author's trial was unfair because crucial witnesses in the case were not called to testify in court. This part of the communication is therefore also inadmissible under article 2 of the Optional Protocol.

5.6 The Committee notes that the author was initially arrested on 27 December 1982, released on bail on 29 August 1983, re-arrested on 18 September 1984 and convicted on 11 March 1986. Given the particular circumstances related to the pursuit of judicial proceedings against Mr. Seerattan, the Committee considers that an issue might arise under article 14, paragraph 3 (c), of the Covenant; this should be considered on the merits.

6. The Human Rights Committee therefore decides:

(a) that the communication is admissible in as much as it appears to raise issues under article 14, paragraph 3 (c), of the Covenant.

(b) that, in accordance with article 4, paragraph 2, of the Optional Protocol, the State party shall be requested to submit to the Committee, within six months of the date of transmittal to it of this

decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) that any explanations or statements received from the State party shall be communicated by the Secretary-General under rule 93, paragraph 3, of the rules of procedure to the author and to his counsel, with the request that any comments which they may wish to make should reach the Human Rights Committee, in care of the Centre for Human Rights, United Nations Office in Geneva, within six weeks of the date of the transmittal;

(d) that this decision shall be communicated to the State party, to the author and to his counsel.

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*/ All persons handling this document are requested to respect and observe its confidential nature.

1/ The author provides no information about the preliminary hearing or the re-arrest.

2/ Privy Council Appeal No. 10 of 1993, judgement delivered on 2 November 1993.

3/ The author was represented by the same attorney at all stages of the judicial proceedings against him, i.e. preliminary hearing, trial and appeal to the Court of Appeal.

4/ It appears from the Notes of Evidence of the trial that the photographer had left the country and that the author's attorney made an application to visit the locus in quo. The prosecution objected because the author's house had burned down after the incident. The application was then withdrawn.

5/ It appears from the written judgement of the Court of Appeal that the attorney admitted before the Court of Appeal that, having examined the evidence in the case as well as the judge's summing-up to the jury, he could find no ground to argue on his client's behalf. The Court of Appeal agreed with the attorney, but stated that: "for the record we should deal briefly with the facts of the case".