

## HUMAN RIGHTS COMMITTEE

### J. S. v. Jamaica

Communication No. 312/1988

21 April 1991

CCPR/C/41/D/312/1988 \*

### ADMISSIBILITY

*Submitted by:* J. S. (name deleted) (represented by counsel)

*Alleged victim:* The author

*State party concerned:* Jamaica

*Date of communication:* 30 March 1988

*Documentation references:* Decisions - CCPR/C/WG/33/D/312/1988 (Working Group combined rule 86, rule 91 decision, dated 8 July 1988).

*Date of present decision:* 21 April 1991

The Human Rights Committee, acting through its Working Group under rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following:

#### **Decision on admissibility**

1. The author of the communication (initial submission dated 30 March 1988 and subsequent correspondence) is J. S., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of a violation by Jamaica of articles 6, 7, 10, and 14, paragraphs 1 and 3(b), (d) and (e), of the International Covenant on Civil and Political Rights. He is represented by counsel.

#### **Facts as submitted**

2.1 The author was arrested on 24 July 1985 on suspicion of having murdered, on 23 July 1985, L. R., in the Parish of St. Elizabeth, Jamaica. Between 25 June and 1 July 1986, he and two co-defendants, J. B. 1/ and M. B., were tried before the St. Elizabeth Circuit Court, Black River. They

were convicted of murder and sentenced to death.

2.2 The author appealed to the Court of Appeal on the grounds that the trial judge had misdirected the jury on the issue of identification evidence. On 7 March 1988, the Court of Appeal dismissed the appeal. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 23 July 1990. With this, it is submitted, domestic remedies have been exhausted.

2.3 The evidence relied on during the trial was the following: at around 6 a.m. on 23 July 1985, the deceased's wife saw her husband leave home in his van, with approximately 30,000 Jamaican dollars in cash to buy pimento. Later the same morning, some police officers found Mr. L. R. shot dead next to his van, on the main road from Cheltenham to Brighton.

2.4 The principal prosecution witness was A. B., a farmer whose house overlooked the Cheltenham-Brighton road. On 23 July 1985 at around 8:30 a.m., he heard two gun shots coming from the direction of the main road. He ran down the hill and hid in the bushes, from where he saw Mr. J. S. and his co-defendants standing beside the van. Mr. A. B. indicated that he had known the author and Mr. J. B. since their childhood. According to Mr. A. B., the defendants were standing approximately 175 yards away from him and the author and Mr. J. B. allegedly each held a gun in their hands; they then appeared to search the van and ran away from the main road along a track running through woodland adjacent to the road.

2.5 After the three men had disappeared, Mr. A. B. reportedly told several people in the neighbouring area different versions of what he had witnessed. When joining a crowd of people outside a shop in Brighton who were discussing the incident, he saw Mr. J. B. and Mr. J. S. pass by, but did not report anything. Later the same day, Mr. A. B. was called by the police who took him to the Newmarket police station, where he described what he had seen in the morning and informed the police about the identity of the presumed authors of the crime.

2.6 Following his arrest, the author spent several days in police custody, but on 5 August 1985 he was released. On 8 October 1985, one of the arresting officers obtained warrants for the arrest of the author and his co-defendants. They were arrested separately between 9 and 14 October 1985. On 15 October 1985, one of the arresting officers, Detective Sergeant A., told them that they were suspected of having murdered Mr. L. R..

2.7 On 15 November 1985, two identification parades were held at the Black River police station. On the first was one C. R., who apparently had been arrested on 14 October together with the author. On the first parade Mr. A. B. was unable to identify anybody; on the second he identified the author. Upon being identified, the author asked Mr. A. B.: "The morning of the incident with L. R., did you see me?" A. B. did not reply. On 3 December 1985, Mr. J. B. and Mr. M. B. appeared on another identification parade. Mr. A. B. identified both. All three were thereupon charged with murder.

2.8 During the trial, the author made an unsworn statement from the dock, denying any involvement in the crime. He merely indicated that on the day in question, 23 July 1985, he had run into some people who had told him that A. B. was spreading rumors about a shooting on the Brighton-Cheltenham road. Apart from this statement, no evidence was called on the author's behalf.

## Complaint

3.1 The author alleges that he was denied a fair trial, contrary to article 14, paragraph 1, of the Covenant. The prosecution's only witness, A. B., had a proved history of mental disorder, having undergone treatment at the Bellevue Psychiatric Hospital. The trial judge allegedly failed to investigate Mr. A. B.'s mental condition; nor was the jury alerted to the dangers of relying on the evidence of a witness with past mental disorders. Furthermore, there were allegedly numerous severe inconsistencies in Mr. A. B.'s testimony. Yet, the trial judge did not convey to the jury that it should exercise extreme caution in the light of these inconsistencies. Finally, there were alleged irregularities in the police investigation of the murder which went largely unexplored and unanswered during the trial, since Detective Sergeant A. had died in February 1986, before the preliminary hearing in the case took place. The other police officer subsequently in charge of the investigation could not explain the irregularities.

3.2 The author further alleges a violation of article 14, paragraphs 3 (b) and (d), of the Covenant, in that he was not provided adequate facilities for the preparation of his defence and was inadequately represented. Thus, neither the psychiatric reports of Mr. A. B. nor the files of Detective Sergeant A. were available to him during the trial. Allegedly, the legal aid attorney assigned to his case made no attempt to obtain Mr. A. B.'s medical records. Furthermore, it is claimed that the author was unable to consult or communicate with his attorney for the appeal, since he was unaware of the latter's identity until the very day of the hearing of the appeal. He was not informed of the date of the hearing of the appeal until the very day it occurred and did not attend the hearing.

3.3 The author contends that his right under article 14, paragraph 3 (e), was violated in that he was denied the opportunity to secure the attendance and examination of witnesses on his behalf. He claims that he informed his attorney that two witnesses were present in court who allegedly could have testified that he was innocent; the attorney, however, took the view that the author's case was weak and that it was not in his interest to call the witnesses. Finally, the representative failed to call any witnesses in relation to Mr. A. B.'s mental disorder.

3.4 The author finally alleges that he has been subjected to violations of articles 6, 7, and 10 of the Covenant. Since the day of his conviction, he has been confined to a small cell on death row. The author describes the living conditions on death row as "dreadful": some 240 inmates fill a prison wing designed for an occupancy of 85; medical and dental care are absent; basic facilities for personal hygiene are missing; the quality of food and drink is unbelievably bad; and recreational and educational facilities of any kind are said to be lacking. The author adds that his health is at serious risk owing to the conditions on death row. Taken together, these factors are said to constitute cruel, inhuman and degrading treatment. In this context, the author submits a copy of a 1990 report on the conditions of detention at his prison prepared by a United States non-governmental organization. Finally, he affirms that a resumption of executions after a virtual moratorium of three years - the last execution in Jamaica took place in February 1988 - would be based on political rather than legal considerations. As a result, a warrant for his execution would amount to an arbitrary deprivation of life.

## State party's observations

4. The State party contends that the communication is inadmissible on the grounds of non-exhaustion of domestic remedies, since the author has failed to pursue constitutional remedies available to him under the Jamaican Constitution. Thus, in respect of his allegation that he was denied adequate facilities for the preparation of this defence, a right protected by section 20, paragraph 6(b), of the Jamaican Constitution, it would be open to him to apply for redress to the Supreme (Constitutional) Court under section 25 of the Jamaican Constitution.

#### Issues and proceedings before the Committee

5.1 Before considering any claims 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 has ascertained, as it is required to do under article 5, paragraph 2(a), of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

5.3 With regard to the State party's contention that the communication is inadmissible because of the author's failure to pursue constitutional remedies available to him under the Jamaican Constitution, the Committee observes that section 20, paragraph 1, of the Constitution guarantees the right to a fair trial, whereas section 25, paragraph 2, stipulates that the Supreme (Constitutional) Court may "hear and determine" applications with regard to the alleged non-observance of constitutional guarantees, but limits its jurisdiction to such cases where the applicants have not already been afforded "adequate means of redress for the contraventions alleged" (sect. 25, para. 2, in fine). The Committee recalls that the State party was requested to clarify, in several interlocutory decisions, whether the Supreme (Constitutional) Court has had the opportunity to determine the question pursuant to section 25, paragraph 2, of the Constitution, whether an appeal to the Court of Appeal and the Judicial Committee of the Privy Council constitutes "adequate means of redress" within the meaning of section 25, paragraph 2. The State party has replied that the Supreme Court has not so far had said opportunity. Taking into account the State party's clarification, together with the absence of legal aid for filing a motion in the Constitutional Court and the unwillingness of Jamaican counsel to act in this regard without remuneration, the Committee finds that recourse to the Constitutional Court under section 25 of the Jamaican Constitution is not a remedy available to the author within the meaning of article 5, paragraph 2(b), of the Optional Protocol.

5.4 Inasmuch as the author's allegations under articles 7 and 10 of the Covenant, related to the conditions of his detention on death row, are concerned, the Committee notes that it is not apparent that the author complaint to the competent authorities about these conditions of detention, or that local remedies before the Jamaican courts in respect of this issue have been exhausted. In this respect, therefore, the Committee concludes that the requirements of article 5, paragraph 2(b), of the Optional Protocol have not been met.

5.5 With respect to the author's claim of unfair trial, the Committee reaffirms its constant jurisprudence that it is generally for the appellate courts of States parties to the Covenant to evaluate the facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, unless it can be ascertained that the

instructions to the jury were clearly arbitrary or amounted to a denial of justice. The Committee has no evidence that the judge's instructions suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.6 The Committee finds that the facts as submitted may raise issues under article 14, paragraph 3(b), (d) and (e), of the Covenant. These will, accordingly, be examined on the merits.

6. The Human Rights Committee therefore decides:

(a) That the communication is admissible inasmuch as it may raise issues under article 14, paragraph 3(b), (d) and (e) 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 the State party shall be requested, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication is under consideration by the Committee. This request does not imply a determination on the merits of the communication;

(d) 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 his counsel, with the request that any comments that they may wish to submit thereon should reach the Committee in care of the Centre for Human Rights, United Nations Office at Geneva, within six weeks of the date of the transmittal;

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

(Done in English, French, Russian and Spanish, the English text being the original version.)

---

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

1/ Mr. J. B.'s communication is also under consideration by the Committee (No. 430/1990).