

## HUMAN RIGHTS COMMITTEE

### N. A. J. v. Jamaica

Communication No. 351/1989

6 April 1992

### ADMISSIBILITY

*Submitted by: N. A. J. (name deleted)*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 3 February 1989 (initial submission)*

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 6 April 1992,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication (initial submission dated 3 February 1989) is N. A. J., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations of his human rights by Jamaica. He is represented by counsel. Although neither author nor counsel invoke specific provisions of the International Covenant on Civil and Political Rights, it appears from the submissions that they invoke a violation of article 14 of the Covenant.

### Facts as submitted by the author

2.1 The author states that he was charged with the murder of A. Y., but claims to be innocent. On the evening of 19 January 1983, he was at the locus in quo where he saw the deceased with two other persons, one Co. and Ch., the deceased's brother. Co. and the deceased were holding guns; Co. was hitting Ch. with his gun, and when the author approached them, he was told not to interfere. Walking away from the scene of the fight, he heard gunshots and began running. A.Y.

was taken to the hospital, where he died of gunshot wounds on 21 January 1983.

2.2 On 3 November 1983, the Home Circuit Court in Kingston found the author guilty of murder and sentenced him to death. The Jamaican Court of Appeal dismissed his appeal on 20 June 1985. A subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 25 January 1988.

2.3 During the trial, the prosecution's main witness, Ms. P. M., girlfriend of the deceased and the only eyewitness to the crime, testified that A. Y. was shot in the back. The pathologist, however, opined that the entry wound was to the right of the abdomen, two inches from the midline of the body.

2.4 The court of Appeal addressed the issue of the apparent inconsistency in the evidence, stating, inter alia, that: "it was open to the jury to accept as a reasonable explanation Ms. P. M. concluding that a wound on the deceased's back meant that he was shot from the back when the wound was an exit wound, and the high probability that the deceased turned around to look when the firing started behind him."

### Complaint

3.1 The author claims that his trial was unfair and that a number of irregularities occurred in its course. He alleges gross misconduct on the part of the trial judge, who purportedly misdirected the jury by failing to explain to it the discrepancy between the testimony of Ms. P. M. and the evidence of the pathologist. He also submits that the trial judge sent further directions to the jurors while they were deliberating, which may have caused additional pressure on them and influenced their verdict.

3.2 The author finally contends that the trial judge erred in permitting author's counsel to make his final address to the jury before Crown counsel made hers. In this connection, it is submitted that Crown counsel should have been required by the trial judge to make her final address to the jury first, so as to avoid emphasizing at the Crown's case to the jury immediately prior to the summing-up.

### State party's observations

4. By submission of 21 July 1989, the State party argues that the communication is inadmissible on the ground of failure to exhaust all available domestic remedies, as required by article 5, paragraph 2(b), of the Optional Protocol. It submits that the author's appeal to the Judicial Committee of the Privy Council was in respect of his criminal case, and that he still has constitutional remedies that he may pursue. The State party further submits that the communication does not disclose a violation of any of the rights set forth in the Covenant.

### 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 taken notice of the State party's contention that the author still has constitutional remedies he may pursue. The Committee observes, however, that the author's claims relate primarily to the conduct of the trial, the judge's instructions to the jury, and evaluation of evidence by the court. It recalls that it is generally for the appellate courts of States parties to the Covenant and not for the Committee to evaluate the facts and evidence in a particular case. Similarly, it is for the appellate courts and 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 author's allegations do not show that the judge's instructions or conduct of the trial suffered from such defects. In this respect, therefore, the author's claims do not come within the competence of the Committee. Accordingly, the communication is inadmissible under article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

- (a) That the communication is inadmissible under article 3 of the Optional Protocol;
- (b) That this decision shall be transmitted 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.)