

## HUMAN RIGHTS COMMITTEE

### G.H. v. Jamaica

Communication No. 370/1989

23 October 1992

CCPR/C/46/D/370/1989\*

### ADMISSIBILITY

*Submitted by: G.H. (name deleted)*

*Alleged victim: The author*

*State party: Jamaica*

*Date of communication: 30 June 1989 (initial submission)*

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

Meeting on 23 October 1992,

Adopts the following:

### **Decision on admissibility**

1. The author of the communication is G.H., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 6, 7 and 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 was arrested in August 1982 and charged with the murder, on 5 August 1982, of one C.S. He was tried jointly with his brother in the St. James Circuit Court, Montego Bay, and convicted and sentenced to death on 3 February 1984; his brother, a minor at the time of the offence, was sentenced to life imprisonment. The Court of Appeal of Jamaica dismissed the author's appeal on 10 April 1987. A subsequent petition for special leave to

appeal to the Judicial Committee of the Privy Council was dismissed on 16 March 1989.

2.2 C.S. was shot dead with two or three bullets fired from a 0.38 calibre weapon in the evening of 5 August 1982 and found near the Camrose main road. The prosecution contended that the author, his brother, one D.S. and another individual had been walking along that road on the evening in question. D.S. left the others temporarily and, after approximately five to seven minutes, heard two explosions. A few minutes afterwards, the author and his brother caught up with him; they told him that they, too, had heard the explosions but that they ignored what had caused them. G.H. testified that he had been walking with D.S. along the main road all along and that, when hearing the explosions, they had all run away.

2.3 During the trial, several witnesses testified that they had seen the author and his brother on the main road in the evening of 5 August. One W.B. testified that he had seen G.H. standing by the body, adding that the author had shown him a 0.38 calibre gun with live cartridges on 2 August 1982. V.B., the sister of W.B., testified that the author had been engaged in a dispute with the deceased on 1 August 1982, and that the deceased had attacked the author with a machete on that occasion.

2.4 The author claims that the B. family had every reason to exaggerate or to commit perjury in court, because of a longstanding feud with his family. He notes that W.B. had omitted any mention of the incident of 2 August 1982 in his witness statement and initial written deposition, and that the judge himself called the evidence of V.B. "confused".

2.5 The author further points out that there was severe conflict over important questions of timing. Thus, D.S. and another witness testified that the events occurred shortly after 7:15 p.m.; W.B., who did not hear any explosions, allegedly saw the author by the body just after 8:30 p.m., with several people following him. There also was no evidence that the author had been carrying a gun on the evening in question. The principal issue in the case therefore was one of reliability of the evidence.

### The complaint:

3.1 The author complains that he did not have a fair trial, because the trial judge misdirected it on the issue of circumstantial evidence, in that he failed to warn the jurors that circumstantial evidence should always be construed narrowly and rigorously, and in that he suggested that circumstantial evidence was "free from the blemishes" of evidence by witnesses who are either mistaken or influenced by grudge or spite. In the author's opinion, the Court of Appeal was equally wrong in holding that the trial judge properly directed the jury on the issue of circumstantial evidence.

3.2 The author further submits that the judge misdirected the jury on the law of aiding and abetting, since he put his directions in such a way that the jury could have been left with the erroneous impression that if the author had been present and watched the shooting, without any intent of encouraging it, he was guilty of murder. In this context, it is noted that the judge told the jury that "the mere presence of those watching the spectacle, if unexplained

... is some evidence of encouragement to those engaged in the combat or the attack".

3.3 Finally, it is claimed that the judge unfairly pressured the jury to return an early verdict: thus, he only began his summing up in mid-afternoon, at 3:49 p.m., and sent the jury to the verdict room at 6:38 p.m., in the hope that the trial could end the same day.

#### Issues and proceedings before the Committee:

4.1 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.

4.2 In as far as the author's claims under article 14 are concerned, the Committee observes that the author's allegations relate primarily to the conduct of the trial by the judge, the evaluation of evidence by the court, and the judge's instructions to the jury. It recalls that it is generally for the appellate courts of States parties to the Covenant 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 is clear that the instructions to the jury were 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 the 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, this part of the communication is inadmissible under article 3 of the Optional Protocol.

4.3 In respect of the author's claims under articles 6 and 7, the Committee finds that they have not been substantiated, for purposes of admissibility; in this respect, accordingly, the author has failed to advance a claim within the meaning of article 2 of the Optional Protocol.

5. The Human Rights Committee therefore decides:

(a) the communication is inadmissible under articles 2 and 3 of the Optional Protocol.

(b) that this communication 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.]

#### Footnotes

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

\*/ Made public by decision of the Human Rights Committee.