HUMAN RIGHTS COMMITTEE

Seerattan v. Trinidad and Tobago

Communication No. 434/1990

26 October 1995

CCPR/C/55/D/434/1990

VIEWS

Submitted by: Lal Seerattan [represented by counsel]

Victim: The author

State party: Trinidad and Tobago

Date of communication: 17 December 1990 (initial submission)

Date of decision on admissibility: 17 March 1994

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

Meeting on 26 October 1995,

Having concluded its consideration of communication No. 434/1990, submitted to the Human Rights Committee by Mr. Lal Seerattan under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication, his counsel and the State party,

Adopts its

Views under article 5, paragraph 4, of the Optional Protocol

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 presented 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 examination 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 and brought to trial on a murder charge. He was tried in the High Court of Port-of-Spain between 6 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 was 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 mother.

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 of 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 voice 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. [1]

The complaint:

3.1 The author claims that his attorney did not represent him adequately and that, as a result, his trial was unfair. [2] 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). [3] The author further complains that his attorney simply abandoned the appeal, as he did not argue any grounds of appeal on his behalf. [4] 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 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.

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 observations on admissibility:

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

The Committee's admissibility decision:

5.1 During its 50th session, the Committee considered the admissibility of the communication.

5.2 The Committee considered inadmissible the author's claims relating to the evaluation of evidence and to the instructions given by the judge to the jury. The Committee recalled 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, or 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 did not show that the trial judge's instructions or the conduct of the trial suffered from such defects.

5.3 The Committee further considered that the author and his counsel had failed to substantiate, for purposes of admissibility, the contention that the author was not adequately represented during the trial and on appeal, and that his trial was unfair because crucial witnesses in the case were not called to testify in court.

5.4 The Committee considered that the period between the author's initial arrest, on 27 December 1982, and his conviction on 11 March 1986, might raise an issue under article 14, paragraph 3(c), of the Covenant, which should be considered on the merits.

5.5 Consequently, on 17 March 1994, the Human Rights Committee declared the communication admissible in as much as it appeared to raise issues under article 14, paragraph 3(c), of the Covenant.

Further information received from the State party:

6. The State party, by submission of 19 April 1995, confirms that the author's sentence has been commuted, on 31 December 1993, to life imprisonment for the rest of his natural life.

Issues and proceedings before the Committee:

7.1 The Committee has considered the communication in the light of all the information provided by the parties. It notes with concern that, following the transmittal of the

Committee's decision on admissibility, the State party has limited itself to informing the Committee about the commutation of the author's death sentence, and that no information has been received from the State party clarifying the matter raised by the present communication. The Committee recalls that it is implicit in article 4, paragraph 2, of the Optional Protocol, that a State party examine in good faith all the allegations brought against it, and that it provide the Committee with all the information at its disposal. In the light of the failure of the State party to cooperate with the Committee on the matter before it, due weight must be given to the author's allegations.

7.2 The Committee notes that the information before it shows that the author was arrested on 27 December 1982, that he was released on bail on 29 August 1983 after the preliminary examination of the case had been concluded, that he was re-arrested on 18 September 1984, that the trial against him commenced on 6 March 1986 and that he was convicted and sentenced to death on 11 March 1986. Although it is not clear from the material before the Committee whether there were one or two preliminary enquiries, or whether the original committal was for manslaughter or murder, the Committee considers that, in the circumstances of the instant case, the period of over three years between the author's initial arrest and the trial against him does, in the absence of any explanations from the State party justifying the delay, amount to a violation of article 14, paragraph 3(c), of the Covenant.

8. The Human Rights Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 14, paragraph 3(c), of the International Covenant on Civil and Political Rights.

9. In accordance with article 2, paragraph 3(a), of the Covenant, the State party is under an obligation to provide Mr. Seerattan with an effective remedy. The Committee has noted that the State party has commuted the author's death sentence and recommends that, in view of the fact that the author has spent over 10 years in prison, of which seven years and nine months on death row, the State party consider the author's early release. The State party is under an obligation to ensure that similar violations do not occur in the future.

10. Bearing in mind that, by becoming a State party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant or not and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy in case a violation has been established, the Committee wishes to receive from the State party, within 90 days, information about the measures taken to give effect to the Committee's Views.

Footnotes

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

2/ 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.

3/ 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.

4/ 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".

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]