

HUMAN RIGHTS COMMITTEE

Rogers v. Jamaica

Communication No. 494/1992

4 April 1995

CCPR/C/53/D/494/1992*

ADMISSIBILITY

Submitted by: Lloyd Rogers [represented by counsel]

Alleged victim: The author

State party: Jamaica

Date of communication: 2 March 1992 (initial submission)

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

Meeting on 4 April 1995,

Adopts the following:

Decision on admissibility

1. The author of the communication is Lloyd Rogers, a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of article 6, paragraphs 2, 7 and 10, and article 14, paragraphs 1, 3 and 5, of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted by the author

2.1 On 21 March 1984, the author was tried and convicted in the Home Circuit Court of Kingston for the murder, on 5 July 1980, of one Marjorie Thomas. In July 1983, he had been tried for the same offence, but the jury did not return a unanimous verdict and a retrial was ordered. After his conviction, the author applied for leave to appeal to the Jamaican Court of Appeal, which confirmed the sentence on 18 December 1985.

2.2 The author had been a corporal in the police force and was a friend of the victim. On 5 July 1980, he had gone with Ms. Thomas and two other acquaintances to a beach in Kingston. While bathing, Ms. Thomas drowned. The author reported the matter to the police station. Ms. Thomas' body was recovered the next day. A post-mortem examination revealed that she had died from asphyxia, caused by strangulation. In the pathologist's opinion, a lesion over the right side of the neck could have been caused by any object with a rough surface, like a rope, belt or stick.

2.3 On 9 July 1980, after having read the post-mortem report, Detective Corporal Thomas interviewed the author, who was cautioned and made a deposition. In it, he stated that on the beach, the deceased had gone for a swim; when she suddenly plunged under water, resurfaced and called for help, the author went out to her and tried to drag her out of the water with his hands. Because he could not swim, he let go and called for help himself. A "rastaman" came to his assistance, but by the time he had reached the spot, the victim had disappeared.

2.4 The prosecution's case rested mainly on the author's statement of 9 July 1980. During the trial, the author made a statement from the dock, in which he stated that the victim had been his girlfriend and that he had tried to save her with a stick with a hook at the end; he had placed the stick around her neck but although she had grasped it with both hands, the current made it difficult to get her out. Thereafter the "rastaman" went to her rescue, in vain. No witnesses were called in the author's defence.

2.5 Before the Court of Appeal, the author's counsel did not challenge the factual basis of the case nor the directions to the jury given by the trial judge. She applied for the introduction of fresh evidence on the basis that one of the jurors had in fact disagreed with the "guilty" verdict but never openly voiced that disagreement in court. The Court of Appeal considered that, if in fact the juror had shaken her head to indicate dissent, then that apparently was not noticed by the prosecution or the defence during the trial, nor by the judge, the court registrar or the court reporter. The Court of Appeal therefore saw no reason to allow the appeal, and considered the directions of the trial judge to have been fair and thorough.

2.6 After the dismissal of his appeal, the author sought to petition the Judicial Committee of the Privy Council for special leave to appeal. On 24 May 1990, leading counsel advised that, on the basis of the Judicial Committee's jurisprudence, such a petition would fail; he referred in particular to the Judicial Committee's decision on the case of **R. v. Lalchan Nanan**, in which the Privy Council had refused to entertain a request to overturn a capital verdict which, in spite of the appearance of unanimity, had allegedly been split and not unanimous. Counsel considers that, in the light of this precedent, a petition for special leave to appeal would not constitute an effective remedy within the meaning of the Optional Protocol.

Complaint

3.1 Counsel alleges violations of articles 7 and 10, on account of "inhuman and degrading

treatment" of the author in custody on death row.

3.2 Counsel further argues that the author's conviction on the basis of a not unanimous verdict by the jury amounts to a violation of article 14, paragraph 1, of the Covenant.

3.3 Counsel also argues that the author's privately retained counsel did not represent him properly. In this connection, it is stated that counsel was absent from the preliminary hearing, did not call any witnesses for the defence, failed to challenge the evidence put forward by the prosecution and did not argue the appeal properly.

3.4 Counsel also contends that potential defence witnesses were intimidated by the police, without however giving any details of this intimidation.

State party's observations

4. By a submission of 9 September 1992, the State party argues that the communication is inadmissible, because it does not disclose any violation of the Covenant.

5. In reply to the State party's submission, counsel indicates that he has nothing to add to his initial communication.

Issues and proceedings before the Committee

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

6.2 With regard to the author's claim that his detention on death row amounts to a violation of articles 7 and 10 of the Covenant, the Committee refers to its prior jurisprudence that detention on death row does not **per se** constitute cruel, inhuman or degrading treatment in violation of article 7 of the Covenant.¹ The Committee observes that the author has not shown in what particular ways he was so treated as to raise an issue under articles 7 and 10 of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

6.3 The Committee further considers that counsel has failed to substantiate, for purposes of admissibility, his claim that the author's defence lawyer did not properly represent him and that the jury's verdict was not unanimous, amounting to a violation of article 14, paragraph 1, of the Covenant. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

7. The Human Rights Committee decides:

(a) The communication is inadmissible;

(b) The present decision shall be communicated to the State party and to the author's

counsel.

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

Notes

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

1/ See the Committee's views on communications Nos. 210/1986 and 225/1987 (**Earl Pratt and Ivan Morgan v. Jamaica**), adopted on 6 April 1989, para. 13.6. See also, *inter alia*, the Committee's views on communications Nos. 270/1988 and 271/1988 (**Randolph Barret and Clyde Sutcliffe v. Jamaica**), adopted on 30 March 1992, and No. 470/1991 (**Kindler v. Canada**), adopted on 30 July 1993.