HUMAN RIGHTS COMMITTEE

Freemantle v. Jamaica

Communication No. 625/1995

30 March 1998

CCPR/C/62/D/625/1995 *

ADMISSIBILITY

Submitted by: Michael Freemantle (represented by Simons Muirhead and Burton)

Alleged victim: The author

State party: Jamaica

Date of communication: 16 February 1995

Date of present decision: 30 March 1998

The Human Rights Committee, acting through its Working Group pursuant to rule 87, paragraph 2, of the Committee's rules of procedure, adopts the following decision on admissibility.

Decision on admissibility

1. The author of the communication is Michael Freemantle, who at the time of submission of his communication was awaiting execution at St. Catherine District Prison, Jamaica. He claims to be a victim of violations by Jamaica of articles 7, 9, paragraphs 2 to 4, 10, paragraph 1, and 14, paragraphs 1 and 2, of the International Covenant on Civil and Political Rights. The author is represented by Saul Lehrfreund of the London law firm of Simons Muirhead and Burton. On an unspecified date in 1995, the author's death sentence was commuted to life imprisonment. An earlier communication submitted to the Human Rights Committee by Mr. Freemantle was declared inadmissible on 17 July 1992, on the ground that the author had failed to exhaust available domestic remedies, since he had not petitioned the Judicial Committee of the Privy Council for special leave to appeal.

Facts as submitted:

2.1 On 1 September 1985, the author was arrested and placed in custody; four days later, he was

charged with the murder of one Virginia Ramdas. The author was first tried in 1986, together with a co-defendant, E.M.; the jury failed to reach a unanimous verdict in the author's respect, and a re-trial was ordered. On 19 January 1987, the author was found guilty as charged in the Clarendon Circuit Court and sentenced to death; on 21 January 1987, he appealed to the Court of Appeal, which dismissed the appeal on 4 December 1987. The Judicial Committee of the Privy Council dismissed the author's petition for leave to appeal on 27 June 1994. The offence for which the author was convicted was classified as a capital offence under the Offences against the Person (Amendment) Act 1992.

2.2 The prosecution contended that on 29 August 1985, at approximately 11:00 p.m., the author fired into a crowd watching a film in Raymonds, parish of Clarendon, injuring several people, among whom was V. Ramdas who died of gunshot wounds the next day. The prosecution relied primarily on the evidence of two witnesses, A.K. and W.C., who were in the cinema at the time of the incident, as well as the evidence of C.C., whose house had been shot at about 15 minutes after the cinema incident.

2.3 At the initial trial, A.K. had identified the author as the man who shot into the crowd; he also identified E.M. and one C.F. as the author's accomplices. At the re-trial, however, he testified that he had identified Mr. Freemantle as the gunman as a result of pressure on him by the community of Raymonds (mainly consisting of P.N.P. supporters), as the author was a known support of the J.L.P. His evidence for the re-trial was that on the evening in question, he had seen some men including "a man looking like Freemantle", E.M. and C.F. going toward the cinema; the man looking "like Freemantle" carried something like a long gun in his hand; this man approached a hole in the wall; an explosion was heard; the man climbed onto a tree and jumped over the wall onto the lawn. A.K. apparently had known the author for 18 years. The trial transcript reveals that when giving evidence at the re-trial, A.K. was himself in custody on charges of illegal possession of firearms and shooting with intent. He conceded that while in custody, he had seen the author and discussed the case with him; he admitted that there were political differences between him and the author.

2.4 W.C. testified that he had known the author for 15 years, had seen him jumping over the wall after an explosion, firing twice, and then climbing back over the wall. He saw the author for about a minute, recognizing him because of bright moonlight. C.C. testified that on the evening in question at 11:50 p.m., he was at home, half a mile from the cinema, when he heard stones being thrown at the house. Looking out of a window, he recognized E.M., whom he knew. He then saw the author, whom he knew for 8 to 10 years, pointing a gun at one of the windows and firing. According to C.C., he saw the author for about two minutes. W.C. and C.C. testified that they had no interest in politics.

2.5 The arresting office, Det. Cpl. Davis, testified that he went to search for the author and E.M. on 30 August 1985. He could not find them and had warrants for their arrest issued. On 2 September 1985, he recognized the author at May Pen Police Stn., where he arrested him. Being cautioned, the author replied that he wanted to see his lawyer. Another police office testified that he took the author into custody on 1 Sept. 1985.

2.6 The author made an unsworn statement from the dock, stating that, at the time of the incident, he was at Mineral Heights, watching television with E.M. and several other people. He did not leave

the place and went to bed between 12:30 to 1:00 a.m. On 1 September 1985, he was told by a police officer that he was a suspect in a murder case, and was detained at the May Pen Police Station. The following day, he saw Det. Cpl. Davis and asked him why he was being held. Davis ignored him, and charged E.M. with destruction of property. The author claimed that it was not until the afternoon of 4 September 1985 that he was formally arrested and charged with murder; he claims that he was brought before an examining magistrate on 6 September 1985. E.M., also in custody at the time of the re-trial, gave sworn evidence for the defence, corroborating the author's alibi. In cross-examination, he admitted that he had spoken to the author in custody but denied having discussed the case, although they were both arrested and charged in connection with the shooting at Raymonds. He affirmed that, while in custody, he had seen prosecution witness A.K. and added that one Laurel Murray, a cousin of the author, was beaten by inhabitants of Raymonds before the shoot-out.

2.7 In his summing-up, the trial judge admonished the jury not to be influenced by political preferences and suggested that, as far as the author's identification was concerned, they should not rely on the evidence of A.K. He further pointed out that the remaining prosecution witnesses had stated that they were neither involved nor interested in politics (which implies that the credibility of their respective testimonies was considerably greater).

2.8 On appeal, the author's lawyer argued that: (a) the verdict was unreasonable and could not be supported having regard to the evidence and (b) the summing-up on identification was inadequate and failed to emphasize the inherent dangers and possibility of mistakes. In respect of ground (b), the Court of Appeal concluded that "despite the absence of a formal warning there had been no miscarriage of justice". Had the jury been properly directed in the sense that had they been given the necessary warning, they would have come to the same conclusion. Before the Judicial Committee, the main issue to be argued was identification.

2.9 As to the claims under article 14, counsel invokes a statement taken from A.K. by an officer of the Criminal Investigation Branch who visited the author in prison on 25 April 1988. In his affidavit, A.K. states that he and the author had been friends but had developed political differences. He also states: "I did not see who fired the shots. Earlier that day Laurel Murray was beaten by citizens [...]. He is the cousin of Michael Freemantle. He told them that I was the person who beat him. The police knew that I was not involved [...] On 1 September 1985, I [...] was taken to Det. Cpl. Davis [...]. [He] told me that he knew that I did not beat Laurel Murray [...]. He said that since they are telling lies on me I should give a statement saying that Freemantle was the one who fired the shots ... He said that W.C. would give a statement supporting me. I was arrested.... for the wounding of Laurel Murray. I went to court where I saw Freemantle. He told me that he was going to tell Laurel Murray to send me to prison. The case was tried and I was dismissed. [...]. I went to Davis' office where he wrote a statement ... I read it and signed it as true and correct. [...]. In this statement I said that I saw Freemantle fired the shots. I gave this evidence at the first trial of Freemantle. [..] In 1986, I was arrested and charged for shooting with intent by Det. Cpl. Davis. In Jan. 1987, I told [Freemantle] that I gave false evidence at the first trial and that I would be telling the truth at the second trial. Davis told me that if I change my evidence he was going to influence the witnesses to give evidence to convict me. As a result of these threats I gave evidence at Freemantle's re-trial and changed a lot of parts to help him [...]. The evidence I gave at both trials are false. I gave it because of fear and threats by Det. Cpl. Davis".

2.10 On the same day, a statement was taken from the author. He states that in his community he is known as a J.L.P. supporter, and that there is constant conflict between J.L.P. and P.N.P. supporters. He claims to be innocent and that he did not go home on the night of 29-30 August 1985, but that he stayed at Mineral Heights. Much of the author's observations coincide with those made by A.K. in his affidavit.

2.11 On 14 June 1988, the Director of Public Prosecutions forwarded to the Governor-General all materials obtained as a result of the police investigation into A.K.'s allegations. According to counsel, no action was taken by the Governor-General in respect of the Dpp's letter. On 29 August 1990, the Jamaica Council for Human Rights contacted a Jamaican lawyer on the author's behalf; this lawyer advised to petition the Governor-General to have the matter referred back to the Court of Appeal of Jamaica; he further stated that legal aid would not be provided, but that he was willing to take the case on.

2.11 As to exhaustion of domestic remedies, it is submitted that a constitutional motion is not available to the author in practice because of his lack of funds and the unavailability of legal aid for this purpose. Counsel recalls the difficulties of finding a lawyer in Jamaica to represent applicants in constitutional motions. The State party's unwillingness to provide legal aid for such motions is said to absolve Mr. Freemantle from pursuing constitutional remedies.

The complaint:

3.1 It is submitted that the author did not receive a fair trial within the meaning of article 14, paragraph 1, because the investigating officer who influenced A.K. falsely to implicate the author could have similarly influenced the other main prosecution witnesses, W.C. and C.C. Counsel refers to the Committee's General Comment No. 13, where the Committee held that it is a duty for all public authorities to refrain from prejudging the outcome of a trial.1/ He submits that Det. Cpl. Davis prejudiced the outcome of the author's trial, in violation of article 14, paragraph 2.

3.2 Counsel invokes another sworn affidavit signed by the author on 27 October 1994, in which he notes that he was arrested and taken to May Pen on 1 September 1985, and that he was held in custody for four days before being charged with murder. During this time, he had no access to a lawyer. Counsel contends that there is no justification for a four day delay between the author's detention and his being informed of the charges against him. With reference to the Committee's General Comment No. 8 2/ and its jurisprudence 3/, it is submitted that the author's pre-trial detention was contrary to the requirements of article 9, paragraph 2, 3 and 4.

3.3 As to alleged violations of articles 7 and 10, the author recalls that on 28 May 1990, he and other inmates broke out of their cells because they had not been allowed to exercise and slop up. The
disturbances spread to other parts of the prison. Inmates were asked to return to the cells and complied, but subsequently, warders took the author from his cell, took off his clothes, searched him and started to beat him with a piece of metal. He sustained injuries to head, knee, stomach and eyes, having been beaten for about five minutes. He then was left in his cell unattended, without medical attention. Only at midnight was he taken to the hospital for treatment; he received stitches to the head and was discharged. Even after the event, and investigations into the actions of some warders,

the author contends that he continued to be subjected to constant verbal intimidation and abuse. On 16 June 1990, the Jamaica Council for Human Rights wrote to London counsel, noting that the author was "badly battered as a result of the disturbances in the prison at the end of last month".

3.4 It is submitted that the treatment to which the author was subjected on 28 May 1990, and the inadequate medical treatment he subsequently received, as well as the continuing fear of reprisals by warders, amount to a violation of articles 7 and 10 of the Covenant. Furthermore, the above is said to be in breach of articles 21, 30 and 32 of the UN Standard Minimum Rules for the Treatment of Prisoners.

3.5 Counsel claims a violation of articles 7 and 10 on account of the prolonged detention of the author on death row, under harsh conditions, noting that the author was held on death row for well over eight years. Referring to the judgement of the Judicial Committee in Pratt and Morgan v. Attorney-General of Jamaica, it is submitted that the agony resulting from such long awaited death amounts to cruel, inhuman and degrading treatment. As to conditions of detention on death row, counsel invokes the reports of two non-governmental organizations on the matter. The author himself was confined to a tiny cell for twenty-two hours every day, spending most of his waking hours isolated from other men, with nothing to keep him occupied. Much of his time is spent in enforced darkness. To counsel, these factors are sufficient in themselves to justify findings of violations of articles 7 and 10.

3.6 Counsel affirms that th author made reasonable efforts to seek domestic redress for the treatment he was subjected to on death row. By December 1993, the Office of the Director of Public Prosecutions had not confirmed that charges were pending against the warders responsible for the beating and the death of three inmates in May 1990. For counsel, the domestic complaints process is wholly inadequate.

Admissibility considerations:

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

4.2 The present communication was transmitted to the State party in March 1995, with a request to provide information and observations in respect of the admissibility of the author's claims. No information has been received from the State party, in spite of a reminder addressed to it in October 1997. The Committee regrets this absence of cooperation on the part of the State party. In the circumstances, due weight must be given to the author's allegations, to the extent that they have been sufficiently substantiated.

4.3 As to the allegations under article 14 of the Covenant, the Committee notes that they relate to the evaluation of facts and evidence in the case by the trial judge and the jury. The Committee 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, unless it can be ascertained that the evaluation of evidence and the instructions to the jury were clearly arbitrary or otherwise amounted to a denial of justice. The Committee notes that the author's submissions in relation to

his claim do not indicate that the trial was manifestly tainted by arbitrariness or amounted to a denial of justice. Accordingly, he has failed to substantiate his claim, for purposes of admissibility, and this part of the communication is inadmissible under article 2 of the Optional Protocol.

4.4 The Committee considers that the author has sufficiently substantiated the remaining claims relating to the circumstances of his pre-trial detention (article 9, paragraph 2 to 4), to beatings and intimidation he allegedly was subjected to while on death row and to the circumstances of his detention on death row. In the absence of any State party information on the availability of effective remedies which might still be available to the author in respect of these claims, the Committee considers that they warrant consideration on the merits.

5. The Human Rights Committee therefore decides:

(a) That the communication is admissible in so far as it appears to raise issues under articles 7, 9 and 10 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 6 months of the date of transmittal to it of the present decision, written explanations or statements clarifying the matter and the measures, if any, that may have been taken by it;

(c) That any explanations received from the State party shall be communicated by the Secretary-General to the author and his counsel, with the request that any comments that they may wish to make thereon should reach the Human Rights Committee, in care of the Office of the High Commissioner for Human Rights, within six weeks of the date of the transmittal;

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

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

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

1/ General Comment 13 [21] (article 14), paragraph 7.

2/ General Comment 8 [16] (article 9); CCPR/C/21/Rev.1, page 7; see paras.2 and 3, where the Committee noted that delays under article 9, paragraph 3, must not exceed a few days.

3/ Communications Nos. 257/1987 (Kelly v. Jamaica), 277/1988 (Jijon v. Ecuador), and 336/1988 (Andre Fillastre v. Bolivia).