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ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE
Forty-seventh session

DECISIONS

Communication No. 404/1990

Submitted by :

N. P.

(represented by counsel)

Alleged victim :

The author

State party :

Jamaica

Date of communication :

17 April 1990 (initial submission)

Documentation references : Prior decisions - Special Rapporteur's combined
rule

86/91 decision, transmitted on
7 August 1990

(not issued in
document form)

Date of present decision : 5 April 1993

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

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ANNEX*

Decision of the Human Rights Committee under the Optional
Protocol to the International Covenant on Civil and
Political Rights - Forty-seventh session

concerning

Communication No. 404/1990

Submitted by : N. P. (name deleted)
Alleged victim : The author
State party : Jamaica
Date of communication : 17 April 1990 (initial submission)

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

Meeting on 5 April 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is N. P., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He claims to be the victim of violations by Jamaica of articles 6; 7; 10, paragraph 1; and 14 of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts of the case :

2.1 On 13 February 1987, the author and two co-defendants were tried before the Home Circuit Court in Kingston for the murder, on 11 November 1985, of one K. W. They were found guilty as charged and sentenced to death. The author's appeal was dismissed by the Jamaican Court of Appeal on 11 July 1988; his subsequent petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 5 April 1990.

2.2 The case for the prosecution was that, in the evening of 10 November 1985, K. W. and his family were at their home in the community of Edgewater. Shortly after 12.30 a.m., Mrs. W. woke up and discovered that her husband had been tied up; next to him stood a man with a gun. On her side of the bed stood another

* Made public by decision of the Human Rights Committee.

man, whom she later identified as the author, who ordered her to put her hand behind her back and then tied them up. The men asked for money; K. W. denied that there was any in the house, upon which he was hit several times with a gun. The robbers then woke up the couple's two children, brought them into their parents' bedroom and threatened to shoot them if the whereabouts of the money was not disclosed. Subsequently, one of the men, later identified as P. L., took an electric iron, plugged it into a socket and used it to burn K. W. over his back. When K. W. lashed out at him and knocked him against the wall, P. L. removed his gun from his waistband and shot K. W. in the abdomen, causing his instantaneous death.

2.3 All three robbers wore handkerchief masks which concealed at least the lower portions of their faces. The prosecution contended that, on several occasions, these masks were removed; this was corroborated by the evidence of the deceased's two children. There were varying accounts as to the source or to the quality of the lighting in the bedroom. It was contended that the principal source of light came from an adjoining bathroom, although at some stage it was argued that the bedside light had also been turned on. In addition to the identification evidence, the prosecution relied upon fingerprints of all three men that were found at the locus in quo.

Complaint :

3.1 The author denies that he ever visited the home of the deceased and asserts that he was apprehended one morning in November 1985, while travelling in a minibus to visit relatives. He was taken to the central police station where he was allegedly beaten in order to force him to sign a self-incriminating statement, which he refused. He claims that his treatment at the police station was in violation of article 7 of the Covenant. The author further contends that he was held for several days in a cell at said station before he was placed on an identification parade. He challenges the conduct of the identification parade on the ground that the police had previously taken away his identification card, which carried his photograph.

3.2 The author claims that he was denied a fair trial, in violation of article 14 of the Covenant. He complains that the identification evidence against him was weak and open to serious criticism. Furthermore, the trial judge is said to have misdirected the jury on the burden and standard of proof in that he directed it that guilt could be established if the jurors were less than "100 per cent sure, because that is not possible". It is further alleged that the judge misdirected the jury on the question of "common design" or "joint enterprise" and, in particular, failed to direct the jurors that they should not convict on the basis of common design unless they were convinced that the author contemplated or foresaw not only the likelihood of violence but, also, of violence causing death or grievous bodily harm.

State party's information and observations :

4. The State party submits that the communication is inadmissible on the ground of non-exhaustion of domestic remedies. It contends that the author may still apply to the Supreme (Constitutional) Court of Jamaica to seek redress for

the alleged breaches, pursuant to Sections 14, 15, 17, 20 and 25 of the Jamaican Constitution. A right of appeal from the decision of the Supreme Court lies to the Court of Appeal and subsequently to the Judicial Committee of the Privy Council.

Issues and proceedings before the Committee :

5.1 Before considering any claim 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 As regards the author's claim under articles 6, 7, and 10, the Committee considers that the author has failed to substantiate his allegations, for purposes of admissibility. This part of the communication is therefore inadmissible under article 2 of the Optional Protocol.

5.3 The Committee observes that the author's remaining allegations concern claims about irregularities in the court proceedings, in that the judge instructed the jury improperly on the issues of identification and common design or joint enterprise. It reiterates that, although article 14 guarantees the right to a fair trial, it is not in principle for the Committee to review specific instructions to the jury by the judge in a trial by jury, 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. In this context, the Committee has examined the judge's instructions to the jury and finds in them no arbitrariness, denial of justice, or a violation of the judge's obligation of impartiality, particularly as regards the question of common design or joint enterprise. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

6. The Human Rights Committee therefore decides:

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

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

[Done in English, French and Spanish, the English text being the original version.]
