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HUMAN RIGHTS COMMITTEE
Forty-ninth session

DECISIONS

Communication No. 384/1989

Submitted by: R.M.

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 16 July 1989 (initial submission)

Documentation references: Prior decisions - Special Rapporteur's rule 91
decision, transmitted to the
State party on 13 August 1991
(not issued in document form)

Date of present decision: 29 October 1993

[Decision on admissibility]

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its confidential nature.
DEC384.49 cm

ANNEX ^{}/**

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

concerning

Communication No. 384/1989

Submitted by: R.M. [name deleted]
Alleged victim: The author
State party: Trinidad and Tobago
Date of communication: 16 July 1989 (initial submission)

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

Meeting on 29 October 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is R.M., a Trinidadian citizen currently awaiting execution at the State Prison in Port-of-Spain, Trinidad and Tobago. He claims to be a victim of violations of the International Covenant on Civil and Political Rights by Trinidad and Tobago.

The facts as submitted by the author :

2.1 The author was arrested in early September 1978 on suspicion of having killed, during the night of 6 to 7 September 1978, one H.H. On 11 September 1978, the Chaguanas Magistrates Court committed him and his co-defendant¹, to stand trial for murder. On 6

¹ On 8 April 1993, the Human Rights Committee adopted its Views on the co-defendant's communication, finding violations of articles 7 and 10, paragraph 1, of the Covenant (see CCPR/C/47/D/362/1989).

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

November 1980, the author and his co-defendant were convicted of murder in the High Court in Port-of-Spain and sentenced to death. On 6 November 1983, the Court of Appeal of Trinidad quashed the convictions and ordered a re-trial. At its conclusion, on 29 June 1984, the High Court once again convicted both defendants of murder. Their further appeal was dismissed by the Court of Appeal on 9 July 1985, as was their petition for special leave to appeal to the Judicial Committee of the Privy Council (22 May 1986).

2.2 In July 1986, a constitutional motion to the High Court of Trinidad and Tobago was filed on the author's behalf. This motion remains pending, but it would appear that its determination has been adjourned sine die.

2.3 The author's conviction, as that of his co-defendant, was based essentially upon the evidence of the principal prosecution witness, L.S. She testified that in the morning of 6 September 1978, she had gone to the Couva Magistrates' Court to attend a hearing. As the hearing of the case was adjourned, she left the court with the author's co-defendant and another man and visited some places of entertainment, where they took some drinks. Later in the afternoon, they separated from the third man and drove to the author's house - the author then joined them. In the evening, they drove to a snack bar in San Juan, where the author and his co-defendant bought further drinks. Thereafter, all three drove to the house of H.H.

2.4 L.S. further testified that both men invited H.H. to join them in having some fun with her; she claimed that, although she became aware of the men's intentions, she was too scared to react. They then drove to a sugar cane field, where they tried to abuse of her. L.S. maintained that the author's co-defendant hit the deceased in the neck or over the head with a cutlass. While the author was holding the deceased to prevent him from escaping, she heard the author's co-defendant fire three shots. No bullets or empty shells were recovered subsequently on the scene of the crime, when the police searched the field where H.H. had been killed.

2.5 L.S. further testified that afterwards, all three drove to the beach, where the author's co-defendant threw the murder weapon into the sea and hid a pair of trousers belonging to the deceased in nearby bushes. A search of the beach produced the trousers but not the cutlass. L.S. added that both accused threatened her with death if she were to report the incident to the police. Under cross-examination, she admitted that she only reported to the police after having been told by her father that the police was looking for her.

2.6 The author denies any involvement in the crime. He contends that he knew neither L.S. nor the author's co-defendant prior to his arrest, and asserts that he was at home during the night of the crime. He further contends that the evidence of two witnesses given during the trial would support his claim that he was in a restaurant when the murder was committed. During the trial, the arresting officer testified that the author had made an oral statement to him upon his arrest, which could be understood as implicating the author in the death of H.H.²; the author points out that when asked in court about a cautioned statement taken from the author at the

² To the arresting officer, the author allegedly remarked that the deceased "cross my path, he got what was coming to him".

police station, the officer was unable to produce the station diary in which such a statement should have been recorded.

The complaint:

3.1 The author contends that L.S. was an accomplice or abettor, and that the judge failed to adequately instruct the jury on the trustworthiness and corroboration of her evidence. In this context, it is submitted that the issue of appropriate instructions was all the more important because of the apparent inconsistencies in the testimony of prosecution witnesses during the re-trial.

3.2 The author further contends that he had insufficient time to prepare his defence. Thus, he claims that prior to the first trial, he did not have the opportunity to discuss the case with his attorney, which his family had retained for him; during the trial, this lawyer's associate did not visit the author to discuss defence statements, although the author insists that he had been promised a visit. Similarly, prior to the re-trial, the attorney assigned to defend him only consulted with him for a limited amount of time on the day of the opening of the re-trial; he adds that this attorney never visited him in prison prior to the re-trial.

The State party's information and observations :

4. The State party does not raise any objections to the admissibility of the communication. It concedes that the author has exhausted all criminal appeals. As to the author's constitutional motion filed in July 1986, it points out that since this motion merely seeks a declaration that should an order for the author's execution be made, he must be given five day's notice, and as this question has already been solved in the affirmative in another case, "... this action is unnecessary". The State party adds that this motion is the only matter which remains pending in court, and that assurances have been given not to execute the author pending its determination. Finally, the State party notes that the author currently benefits from legal representation.

Issues and proceedings before the Committee :

5.1 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.

5.2 As to the author's claim of unfair trial, because of the court's evaluation of the evidence, in particular the testimony of the main prosecution witness and the alleged inadequacy of the judge's instructions to the jury, the Committee reaffirms that it is generally for the appellate courts of States parties to the Covenant to evaluate facts and evidence in a particular case. It is not in principle for the Committee to review specific instructions to the jury by the judge, unless it can be ascertained that the instructions were clearly arbitrary or amounted to a denial of justice, or

that the trial judge manifestly violated his obligation of impartiality. After careful consideration of the material before it, the Committee cannot conclude that the conduct of the trial or the judge's instructions suffered from such defects. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, under article 3 of the Optional Protocol.

5.3 As to the author's claim that he had insufficient time to prepare the defence for his first trial and re-trial, the Committee's concern is only with the re-trial, as the conviction in the first trial had been quashed. Concerning the re-trial, the author has failed to substantiate his claim that the time available for consultation with his attorney prior to it prevented counsel or himself from adequately conducting the defence. Furthermore, the material before the Committee does not reveal that an adjournment of the re-trial was requested because of insufficient time for the preparation of the defence. In the circumstances, the Committee concludes that the author has no claim under the Covenant, within the meaning of article 2 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 and to the author of the communication.

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