Communication No. 485/1991, V. B. v. Trinidad and Tobago (decision of 26 July 1993, adopted at the forty-eighth session)

Submitted by: V. B. (name deleted)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 28 November 1991

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

Meeting on 26 July 1993,

Adopts the following:

Decision on admissibility

1. The author of the communication is V. B., 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 by Trinidad and Tobago of article 14, paragraphs 1 and 3 (c), of the International Covenant on Civil and Political Rights. He is represented by counsel.

Facts as submitted

2.1 The author was convicted of the murder, on 1 August 1979, of his common-law wife, P. M. The Court of Appeal quashed the author's conviction and sentence at the first trial, on the ground of a misdirection to the jury by the trial judge on a point of law, and ordered a retrial. a/ The retrial was held on 13 March 1986, before the Port-of-Spain Assizes Court. The author was again found guilty and sentenced to death. The Court of Appeal dismissed his appeal on 16 June 1989. His petition for special leave to appeal to the Judicial Committee of the Privy Council was dismissed on 14 October 1991. With this, it is submitted, all domestic remedies have been exhausted.

2.2 The prosecution's case was based on the evidence of several witnesses. An eye-witness, A. H., testified that, on 1 August 1979 at about 6.45 p.m., he stopped by the house where the deceased, her family and the author were living. The author, together with P. M., who was holding her 11-month-old baby, and one J. A., were sitting outside, opposite to the family home. He sat down with them. After a while, V. B. called him aside and told him that he was having problems with his wife and her family, and allegedly said: "I feel like killing all of them". After buying some drinks, J. A. and he returned to the steps where P. M. was still sitting. The author was standing

at the gate of the house, watching them. Upon P. M.'s request, the author brought the baby inside; he then returned, called P. M. and they both sat down on a nearby bench. A. H. further testified that he did not hear the author and P. M. quarrelling, nor did he see them struggling, but shortly afterwards he heard her calling "Oh God", and saw her running towards the house, bleeding heavily, then collapsing in the yard. The author, who had a shining object in his hand, ran away from the scene. P. M. was brought to the hospital, where she died. The post mortem examination disclosed that she had sustained three stab wounds.

2.3 P. M.'s sister testified that when returning home, she saw the author walking down the street. Upon asking him where he was going, he replied that he had just stabbed her sister three times; he further advised her to go to the hospital to find out whether P. M. had died.

2.4 The arresting officer gave evidence that the author had refused to leave the house where he was hiding, and that he threatened to stab himself if the police entered the house. Upon entering the house, the police found him with a small wound on his chest, which the author said was self-inflicted with a pair of scissors. He was taken to the hospital where he remained for eight days. The police officer further testified that the author, after cautioning, said that he and P. M. had had an argument over a pack of cigarettes, and that he had stabbed her with a knife.

2.5 The author gave evidence from the witness stand. He testified that he had had an argument with his wife because of the way in which she was dressed in the company of two other men. After he had taken the baby inside, he returned and requested her to come inside. She became angry, and began fighting when they entered the yard. She picked up a knife and tried to stab him. As a result, he sustained a slight cut on the hand and on the chest. He then became frightened, lost control, and only remembered "pelting" a blow at her with the knife she had. He further stated that he did not know how she got three stab wounds, or how he got possession of the knife. He denied having made the alleged remarks to the prosecution witnesses. Under cross-examination, the author admitted that he had stabbed P. M., but could not recall how many times.

2.6 J. A., who had been a witness for the prosecution at the first trial, was called as a witness for the defence at the retrial. While giving evidence, he was manifestly under the influence of alcohol and/or drugs; his evidence was prejudicial to the defence, as it situated the incident in the street and not in the yard, as the author contended. The defence, however, did not request the judge to adjourn the trial to allow the witness to "sober up".

2.7 In her address to the jury, the author's attorney stressed that the defence was one of provocation. The judge, in his summing-up, left the issues of self-defence and accidental death to the jury but, it is claimed, he appeared to suggest that the jury was already decided on the facts. He stated:

"Now I will go through very briefly the evidence in the case, members of the jury. Perhaps we can get our bearings from the photographs first of all. I am sure it is very clear in your mind, but nevertheless as a trial judge I have to do my duty and, at least, review the evidence with you briefly. If I don't, the next thing you may hear if you return a verdict of guilty, is that counsel for the defence files an appeal and says the trial judge erred in law for not reviewing the evidence for the defence with the jury. We want not to have that sort of thing happen, so I have a job to do. So bear with me, although I am sure you have these facts very clearly in your mind, and perhaps by now most or all of you have decided this case already, I don't know, please don't, wait a little while before you come to any conclusion".

2.8 The Court of Appeal described J. A.'s evidence as having "knocked the bottom out of the [author's] case". Furthermore, the Court of Appeal accepted that a trial judge should not allow an unfit witness to give evidence, and that if an opportunity is not given for such witness to "sober up", an accused may be severely prejudiced in his defence. It found, however, that "before a verdict can be quashed on that ground it should be established, inter alia, that the evidence [J. A.] was expected to give was favourable to the defence, for only then it might be said that the defence was prejudiced; and we would expect that a request for an adjournment would be made in the circumstances". The Court of Appeal then considered the evidence which J. A. would have been likely to give, on the basis of his deposition taken at the preliminary enquiry (when he was a witness for the prosecution), and concluded that the author's defence was not prejudiced, and that J. A.'s version of the incident would be likely to support the prosecution. It concluded that: "To suggest that J. A. could have given, if sober, evidence favourable to the [author] is mere conjecture and there is, in our view, little surprise that no request was made by the defence for an adjournment to accommodate him".

Complaint

3.1 As to a violation of the author's rights under article 14, paragraph 1, of the Covenant, counsel points out that the trial judge directed the jury that, even if it found that the incident happened as the author had stated, a verdict of murder was still open to it. Counsel submits that this was a misdirection because, if the jury found that the events occurred as the author had stated, he would have been entitled to an acquittal, since he lacked the necessary intention. Moreover, in his review of the evidence to the jury, the trial judge suggested that it probably already had made up its mind. Counsel submits that this was improper and amounted to an invitation to the jury to convict the author of murder. Furthermore, it is submitted that the author's defence was severely prejudiced, because the judge permitted an important defence witness to give evidence under the influence of alcohol and/or drugs. Counsel concedes that the trial judge suggested to the jury that the witness could hardly be relied on, but argues that, nevertheless, the judge should not have allowed the evidence, which was

unfavourable to the author, to go before the jury and to be used in their deliberations. He submits that, in the circumstances, the judge should have adjourned the trial in order for J. A. to sober up. In this context, counsel refers to the written judgement of the Court of Appeal.

3.2 The irregularities in the admission of evidence, the direction to the jury and comments made by the judge when reviewing the evidence are said to have deprived the author of a fair trial.

3.3 Counsel points out that the alleged murder occurred in August 1979, that V. B.'s first trial and appeal took place at some time thereafter, and that his case did not come before a court again until May 1983, nearly four years after the crime. It was then adjourned because the author had no legal representation. There was a further delay of nearly three years, mainly because the author still had not obtained legal representation. He was eventually tried in April 1986, almost seven years after the events. Counsel concedes that part of the delay appears to be attributable to the author, who did not succeed in retaining counsel privately and failed to apply again for legal aid after his first trial. He submits that nevertheless the retrial took place after an unacceptable length of time, in violation of article 14, paragraph 3 (c).

State party's information and observations

4. The State party concedes that the author has exhausted the domestic remedies available to him. It does not object to the admissibility of the communication.

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 While the State party does not object to the admissibility of the communication, it is the Committee's duty to ascertain whether all the admissibility criteria laid down in the Optional Protocol have been met. The Committee has therefore considered the admissibility of the author's claims to be a victim of an unfair trial, (a) because the judge allowed an important defence witness to give evidence while under the influence of alcohol or drugs, evidence that was put before the jury and which it was for the jury to accept or to reject, and (b) because of the alleged inadequate direction to the jury and comments made by the judge. In this context, the Committee recalls its constant jurisprudence 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 placed before domestic courts. Similarly, it is for the appellate courts and not for the Committee to review the conduct of the trial, or specific instructions to the jury by the judge, unless it can be ascertained that the judge's conduct or the instructions to the jury

were clearly arbitrary or amounted to a denial of justice. On the basis of the material placed before it, the Committee does not consider that the judge's instructions or his conduct of the trial suffered from such defects. In particular, the Committee notes that both the Court of Appeal of Trinidad and Tobago and the Judicial Committee of the Privy Council examined these issues. Accordingly, this part of the communication is inadmissible as incompatible with the provisions of the Covenant, pursuant to article 3 of the Optional Protocol.

5.3 As to the claim of undue prolongation in the judicial proceedings, the Committee notes, on the basis of the information before it, that the delays in the proceedings were essentially attributable to the author. The Committee concludes that in this respect the author has no claim under the Covenant, within the meaning of article 2 of the Optional Protocol.

6. The 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.]

Notes

a/ Counsel does not provide information on the author's initial trial, nor on the circumstances of the first appeal.