

L. Communication No. 281/1988, C. G. v. Jamaica (Decision of 30 October 1989, adopted at the thirty-seventh session)

Submitted by: C. G. [name deleted]
Alleged victim: The author
State party concerned: Jamaica
Date of communication: 10 February 1988 (date of initial letter)

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

Meeting on 30 October 1989,

Adopts the following:

Decision on admissibility

1. The author of the communication (initial submission dated 10 February 1988 and subsequent correspondence) is C. G., a Jamaican citizen currently awaiting execution at St. Catherine District Prison, Jamaica. He is represented by counsel.

2.1 The author was arrested on 7 April 1984 and charged with the murder, together with a co-defendant, N. D., of one A. I., in the District of Manchester, Jamaica; he claims to be innocent. On 11 October 1984, he was sentenced to death in the Westmoreland District Court; his co-defendant was convicted of manslaughter and sentenced to 30 years imprisonment (reduced to 20 years on appeal). The Court of Appeal of Jamaica dismissed his appeal on 28 July 1987.

2.2 As to the facts of the case, a/ it is submitted that the author broke into Mr. I.'s house at dawn, together with three other men, allegedly with the intention of stealing money. Mr. I. and his family (his wife and two daughters) were threatened with death and forced to hand over all their money. According to Mrs. I.'s account, her husband was shot during the robbery. One of his daughters, L. I., also testified that C. G. allegedly had admitted to her that he had shot her father. During the identification parade on 11 May 1984, L. I. purported to identify the author as the murderer. In this connection, the author claims that the police officers who conducted the parade influenced the deceased's widow and daughter as to whom they were to identify. He further points out that the deceased's widow failed to identify him.

2.3 The author states that the conduct of the identification parade was challenged unsuccessfully by his legal aid attorney during the trial. He further claims that he had no opportunity to consult with his lawyer prior to or during the trial and appeal proceedings.

3. By decision of 21 March 1988, the Working Group of the Human Rights Committee transmitted the communication to the State party and requested it, under rule 91 of the rules of procedure, to provide information and observations relevant to the question of the admissibility of the communication. It further requested the State

party, under rule 86 of the rules of procedure, not to carry out the death sentence against the author while his communication was under consideration by the Committee.

4. In his submission under rule 91, dated 25 October 1988, the State party argues that the communication is inadmissible pursuant to article 5, paragraph 2 (L), of the Optional Protocol because the author may still apply, for special leave to appeal to the Judicial Committee of the Privy Council. It further submits that legal aid will be available for that purpose.

5. In his comments, dated 28 December 1988, author's counsel argues that the sole issue in the case relates to the treatment of identification evidence. He challenges the author's identification by the deceased's daughter and reiterates that the deceased's widow did not identify the author. While conceding that the case does not fall into the category of "fleeting glance identification", counsel contends that the nature of the identification by the deceased's daughter called for a careful and precise summing up by the judge, given the absence of corroborative or other supporting evidence. He further submits that the judge did not comply with the strict rules on identification guidelines laid down by the Court of Appeal of England in the case of R. v. Turnbull (1976) and that, as a result, he misdirected the jury on several relevant issues. In particular, the judge is said to have failed to warn the jury that a mistaken witness may be a credible witness; that he misdirected the jury as to the lack of corroborative or other supporting evidence for the author's identification by the deceased's daughter; that he inadequately directed the jury in relation to identification on the conditions prevailing during the robbery in the middle of the night; that he wrongly inferred that support for the identification by the deceased's daughter could come from identification evidence of N. D.

6.1 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.

6.2 The Committee has ascertained as it is required to do under article 5, paragraph 2 (a), of the Optional Protocol, that the matter is not being examined under another procedure of international investigation or settlement.

6.3 With respect to the requirement of exhaustion of domestic remedies, the Committee has noted the State party's contention that the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol, since the author may still petition the Judicial Committee of the Privy Council. It observes that the author has obtained legal representation for this purpose, and that his counsel in London is currently preparing a petition for special leave to appeal to the Judicial Committee of the Privy Council on his behalf. It cannot conclude, on the basis of the information before it, that a petition for special leave to appeal to the Judicial Committee of the Privy Council would not constitute an effective remedy available to the author within the meaning of article 5, paragraph 2 (b), of the Optional Protocol.

7. The Human Rights Committee therefore decides:

(a) That the communication is inadmissible under article 5, paragraph 2 (b), of the Optional Protocol;

(b) That, since this decision may be reviewed under rule 92, paragraph 2, of the Committee's rules of procedure upon receipt of a written request by or on behalf of the author containing information to the effect that the reasons for inadmissibility no longer apply, the State party shall be requested, taking into account the spirit and purpose of rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author, before he has had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review the present decision;

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

Notes

a/ The author's submissions do not provide a detailed account of the facts. The following description follows the outline of the facts in the judgment of the Court of Appeal.

b/ See 63 Cr. App. R 132. These guidelines are also applied by Jamaican courts. Subsequent to counsel's comments, the Judicial Committee of the Privy Council allowed the appeal of Oliver Whyllie and quashed the judgment of the Court of Appeal in his case. In its judgment of 27 July 1989, the Judicial Committee of the Privy Council stated that "Their Lordships have no hesitation in concluding that a significant failure to follow the guidelines laid down in Turnbull will cause the conviction to be quashed because it will have resulted in a substantial miscarriage of justice."