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HUMAN RIGHTS COMMITTEE
Fifty-fourth session

DECISIONS

Communication No. 515/1992

Submitted by :	Peter Holder (represented by Counsel)
Alleged victim :	The author
State party :	Trinidad and Tobago
Date of communication :	13 February 1989 (initial submission)
Documentation references :	Prior decisions - Special Rapporteur's combined rule 86, rule 91; transmittal to State party on 16 December 1992 (not issued in document form)
Date of present decision :	19 July 1995

[ANNEX]

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

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ANNEX

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
- FIFTY-FOURTH SESSION -

concerning

Communication No. 515/1992

Submitted by: Peter Holder (represented by counsel)

Alleged victim: The author

State party: Trinidad and Tobago

Date of communication: 13 February 1989 (initial submission)

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

Meeting on 19 July 1995,

Adopts the following:

Decision on Admissibility

1. The author of the communication is Peter Holder [1], a Trinidadian citizen, at the time of submission awaiting execution at the State Prison of Port-of-Spain, Trinidad and Tobago. He claims to be a victim of violations of his human rights by Trinidad and Tobago. The author's death sentence has been commuted to life imprisonment.

2.1 The author and two men, Irvin Phillip and Errol Janet, were jointly charged with the murder on 29 March 1985, of one Faith Phillip. On 5 May 1988, after a trial which lasted one month, the jury failed to return a unanimous verdict, and a retrial was ordered. On 18 June 1988, the accused were found guilty as charged and sentenced to death by the second Assizes Court of Port-of-Spain. In March 1990, the Court of Appeal of Trinidad and Tobago dismissed the appeal of Messrs. Holder and Phillip, whereas it acquitted Errol Janet; it issued a written judgment two weeks later. On 27 June 1994, Mr. Holder petitioned the Privy Council for special leave to appeal which has been granted, however the case still has not been heard by the Privy Council.

2.2 The case for the prosecution was based on the evidence given by the sole eyewitness to the crime who testified that, on the morning of 29 March 1985, she was at work in the Zodiac Recreation Club in Port-of-Spain. She was inside the bar and Faith Phillip sat in front of the bar, when the three men came in. They sat down at a table and started talking. Accused No.1, whom she

[1] Original communication was submitted by Peter Holder and Irvin Phillip, the communications were separated at counsel's request and have been respectively registered as communications Nos. 515/1992 and 594/1992.

recognised as Mr. H older, ordered a drink. After a while, he went downstairs and she heard a sound as if the gate to the entrance was being closed. When he came back, she asked the deceased to have a look. Upon her return to the bar, the deceased was grabbed by accused No.2, whom she recognised as Mr . Phillip. Accused No.1 then kicked open the door to the bar and entere d the bar with accused No.3, whom she recognised as Mr. Janet. Both were holdin g knives. accused No.1 forced her to open the cash reg ister, which she did, and accused No.3 took the money from it. She was forced to show them the Club owner' s room, which was at the back. There, accused No.1 tied her up, while No. 3 searched the room for valuables. She was told to face the wall, but befor e doing so she saw ac cused No.2 pulling Ms Phillip to the back. She then heard fighting in the opp osite room, which continued for about 5 minutes. After it stopped she heard footsteps, as if the accus ed were leaving. Finally, she was untied by the Club's electrician who passed by and they found the decease d lying on the floor.

2.3 One of the co-accused, Mr. Phillip, gave sworn testimony denying any knowledge of the crime and claiming that he had never left his home on 2 9 March 1985. His statement to the police was also admitted into evidence after a voire dire .

2.4 The second co-accused, Mr. Janet, affirmed upon oath his previou s statement to the police. He stated that the robbery had been planned b y accused No.1 and 2, who had received information that the owner of the Club kept all his money at the Club. He claims to have taken part in the robbery out of fear o f the other two men. He further stated that he had prevente d accused No.1 from further hitting the deceased.

2.5 The case for the de fence was based on the sworn statement given by Mr. Holder at the trial, in which he admitted his participation in the robbery. He denied, however, having struck the deceased. He stated that while he and accused No. 3 were emptying the drawers in the Club owner's room, he sa w accused No.2 going up the corridor with the deceased. When they left th e building, they met accused No. 2 outside. The author further denied that he made selfincriminating statements to the police. Said statements were admitted into evidence after counsel had challenged their voluntariness.

2.6 The author states t hat, in the morning of 3 April 1985, he went to the police station, because he had heard that the police was looking for him.

The complaint

3.1 The author claims t hat his trial was unfair in breach of article 14 of the Covenant. In this context, he submits that :

- durin g the first trial, an article was published in the local newspape r which was highly prejudicial to his case. He states that the judge, as well as the three counsels for the defence, called upon the reporters to rectify the "misleading" publication. However, the e ffect was such that it would have been impossible to select an unbiased jury for the re-trial.

- the initial date for the re-trial was 1 June 1988. On that day, he wa s informed that his c ounsel and counsel for Mr. Phillip had withdrawn from the case. In spite of their requests for a counsel of their own choosing, th e judge told them that he would appoint counsel and adjourned the trial to 16 June 1988. On 6 June 1988, the author wrote a letter to the Legal Ai d Authorities, requesting counsel of his own choice. He states that one da y

before the trial started, he was visited by another court-appointed lawyer, who only took thirty minutes to discuss his case. The author alleges that the assignment of a lawyer contrary to his choice amounts to a violation of Section 4, paragraphs (b) and (d), and section 5, paragraph 2 (c), of the Constitution of Trinidad and Tobago. He also claims that he was denied reasonable time for the preparation of his defence.

- the trial judge prevented counsel from properly conducting the defence. The author claims that the judge constantly interrupted and embarrassed counsel by telling him questions to ask and refusing to admit others. Before the trial started the judge allegedly set a deadline, thereby putting a lot of pressure on counsel to complete the defence within a specified time limit. When counsel asked for a break, the judge allegedly prevented counsel from seeking the author's instructions during the trial. The judge also allegedly forced the author to reply to self-incriminating questions in cross-examination by the prosecution, by threatening him that he would be charged with contempt of court if he did not reply.

- counsel failed to adequately represent the author. The author complains that his counsel was inexperienced and that he failed to cross-examine witnesses on relevant issues. This is said to amount to gross negligence.

- the police failed to adequately inform the author of the charges against him. The author claims that he was only charged with robbery, whereas he was later convicted of murder.

3.2 The author further claims that when he was taken into custody he was placed in a cell which allegedly was so crowded that he had to remain standing up all day and night. He claims that he was denied the use of a toilet, as well as food and water. Furthermore, he claims that the following morning he was taken to an office where he was "physically assaulted" by police officers, in breach of article 10 of the Covenant.

3.3 It is not stated whether the case has been submitted to another procedure of international investigation or settlement.

The State party's information and observations

4. By submission of 12 November 1993, the State party states that the author's case is before the Privy Council. In a further submission of 9 February 1994, the State Party informs the Committee that the author's death sentence has been commuted to life imprisonment.

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

5.3 As to the requirement in article 5, paragraph 2(b), of the Optional Protocol that domestic remedies be exhausted, the Committee notes that the State party and the author agree that the author's case is still pending

before the Judicial Committee of the Privy Council. Therefore, the Committee concludes that domestic remedies have not been exhausted.

6. The Human Rights Committee therefore decides:

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

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

[Adopted in English , French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russia n as part of the Committee's annual report to the General Assembly.]

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