IN THE PRIVY COUNCIL No. 37 of 1978

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD
ACT NO. 4 OF 1976

BETWEEN

STANLET ABBOTT (Appellant)

AND

THE ATTORNEY GENERAL OF
TRINIDAD AND TOBAGO
THE REGISTRAR OF THE SUPREME
COURT, MR GEORGE BENNY
THE COMMISSIONER OF PRISONS
MR. RANDOLPH CHARLES (Respondents)

RECORD OF PROCEEDINGS

INGLEDEW, BROWN, BENNISON & GARRETT,
51, MINORIES,
LONDON EC 3N 1JQ,

Solicitors for the Appellant.

CHARLES RUSSEL & CO.
HALE COURT
LINCOLN'S INN
LONDON WC2 3UL

Solicitors for the Respondents.

IN THE PRIVY COUNCIL NO. 37 OF 1978.

ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO ACT NO. 4 OF 1976.

BETWEEN

STANLEY ABBOTT (Appellant)

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO,
THE REGISTRAR OF THE SUPREME COURT MR. G. BENNY
THE COMMISSIONER OF PRISONS MR. RANDOLPH CHARLES (Respondents)

RECORD OF PROCEEDINGS

INDEX OF REFERENCE

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ON APPEAL

FROM THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

In The Matter of the
Constitution of Trinidad and Tobago
(Act No. 4 of 1976)

And

In The Matter of the
Application of Stanley Abbott a person
10 alleging that the provision of the
Constitution protecting his human rights
and fundamental freedom have been are being
contravened in relation to him for redress
in accordance with section 14 of the said
Constitution

And

The Order of the Judicial Committee of the
Privy Council dated 20th July, 1976, whereby
20 the appeal of the Applicant was dismissed
and the conviction of murder and sentence
of death affirmed.

No. 1

Notice of Motion

In the High Court.

No. 1

Notice of Motion

15th March 1977.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the Matter of the
Constitution of Trinidad and Tobago
(Act No. 4 of 1976)

And

In the High Court.

No. 1

Notice of Motion.

15th March, 1977.

(Continued)

In the Matter of the Application of Stanley Abbott a person alleging that the provision of the Constitution protecting his human rights and fundamental freedom have been are being contravened in relation to him for redress in accordance with section 14 of the said Constitution

And

The Order of the Judicial Committee of the Privy Council dated 20th July, 1976, whereby the appeal of the Applicant was dismissed and the conviction of murder and sentence of death affirmed.

NOTICE OF MOTION

Take Notice that the High Court of Justice Port of Spain will be moved on the 25th day of March 1977 at the hour 9 o'clock in the forenoon or so soon thereafter as Counsel Ramesh Laurence Maharaj Esq. may be heard on behalf of the above-named applicant Stanley Abbott for the following reliefs, namely:-

(a) An order that the sentence of death passed on the applicant is unconstitutional, null and void since there was procrastination in carrying out the sentence from 20th July, 1976 after the Privy Council dismissed the applicant appeal against conviction for murder of Gale Ann Benson.

(b) An order that the Government of Trinidad and Tobago and/or the Registrar of the Supreme Court and/or Commissioner of Prisons be restrained from executing the said applicant.

(c) Alternatively an order that the sentence of death on the applicant be commuted to life imprisonment.

(d) Such further or other relief as the justice of the case may require and which the Court may grant pursuant to the provisions of Section 14 of the Constitution of Trinidad and Tobago.

(e) Such further or other relief as the justice of the case may require including such orders, writs and directions as may be necessary or appropriate to enforce the human rights and

fundamental freedoms guaranteed by the constitution.

(f) Costs.

And Further Take Notice that the grounds of the application are as follows:-

(1) The period of detention from July 26, 1976 to date and the conditions under which the Applicant was kept amount to cruel and unusual treatment and further that it amounts to torture of the applicant.

(2) The applicant was denied equality before the law and the protection of the law since Edward Chadee was granted a commutation of his death sentence to life imprisonment.

(3) The applicant was denied equality of treatment.

(4) The threat of executing the applicant at this time amounts to a denial of his life, liberty and security without due process of law.

And Further TAKE NOTICE that the Applicant will file affidavits which he will rely upon at the hearing in support of the Motion and upon such further evidence as the Court may receive.

Dated this 15th day of March, 1977.

/s/ G.P. Morean & Co.,

Applicant's Solicitors.

This Motion was filed by Messrs. G.P. Morean & Co. of No. 110 St. Vincent Street, Port of Spain, Solicitors for the Applicant herein.

To: The Registrar of the Supreme Court.

And To: The Hon. Attorney General.

And To: The Commissioner of Prisons.

In the High Court.

No. 2.

Affidavit of Stanley Abbott.

24th March, 1977.

No. 2

Affidavit of Stanley Abbott.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the Matter of the Constitution of Trinidad and Tobago (Act No. 4 of 1976)

And

In the Matter of the Application of Stanley Abbott a person alleging that the provision of the Constitution protecting his human rights and fundamental freedoms have been are being contravened in relation to him for redress in accordance with section 14 of the said Constitution

And

The Order of the Judicial Committee of the Privy Council dated 20th July, 1976, whereby the Appeal of the Applicant was dismissed and the conviction of murder and sentence of death affirmed.

I, STANLEY ABBOTT of Frederick Street, in Port of Spain, make oath and say as follows:-

1. On July 16, 1973, I was convicted of the murder of Gale Ann Benson in the High Court of Trinidad and Tobago and sentenced to death by the said court.

2. I eventually appealed to the Judicial Committee of the Privy Council against the conviction and sentence and the Board dismissed my appeal by a 3 - 2 majority on July 20, 1976,

3. On or about July 22, 1976, the respondents were informed of the Privy Council's decision.

4. The said sentence of death has to date not been carried out.

5. Following upon the Privy Council's decision I presented through my solicitor a petition to the then Governor General for the consideration of the then Advisory Committee on the Perogative of Mercy. I lost no time in presenting this petition, which was presented on July, 26, 1976, less than a week after the Privy Council's decision.

6. From July 26, 1976, to the present time I have been left to languish in a closed prison cell and the unspeakable anguish I have experienced as a result has been to me a terrible punishment.

7. I suffered continuously from nervous tension created by the uncertainty as to whether I would be executed or allowed to live. The resulting feelings were frightening. In addition I was kept in the death cell, which measures about 10 feet by 6 feet. My bed occupies most of the room and the hangman's trap is about 10 feet away.

8. The room is dark with little fresh air. I suffer from sleeplessness caused by anxiety and worry and no effort was made by the authorities to prevent or appease the situation.

9. As a result of the procrastination of the authorities and the manner and method of my incarceration and my sufferings as a prisoner in the death cell for a long period I suffered cruel inhuman and unusual treatment and/or punishment. I also felt tortured during the period of my incarceration.

10. A fellow-convict, Edward Chadee, was jointly tried with me for and jointly convicted of the same offence. He was likewise sentenced to die. His sentence of death was commuted to life imprisonment in this month and mine was not.

11. I respectfully ask Your Lordship to grant me the relief set forth in the motion filed herein on my behalf.

Sworn to by the above-named STANLEY ABBOTT at No. 103A Frederick Street, Port of Spain, this 24th day of March, 1977.

/s/ Stanley Abbott.

Before me,

/s/ Geo. H. Sealy

Commissioner of Affidavits.

Filed on behalf of the Applicant herein.

In the High Court.

No. 3.

Affidavit of George R. Benny.

6th April, 1977.

No. 3.

Affidavit of George Ramoutar Benny.

TRINIDAD AND TOBAGO.

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the Matter of the Constitution of Trinidad and Tobago (Act No. 4 of 1976)

And

In the Matter of the

Application of Stanley Abbott a person alleging that the provision of the Constitution protecting his human rights and fundamental freedom have been are being contravened in relation to him for redress in accordance with section 14 of the said Constitution

And

The Order of the Judical Committee of the Privy Council dated 20th July, 1976, whereby the appeal of the Applicant was dismissed and the conviction of murder and sentence of death affirmed.

I, GEORGE RAMOUTAR BENNY of 48 Real Spring Avenue, Valsyn, in the Ward of Tacarigua, in the Island of Trinidad, make oath and say as follows:-

I Have read what purports to be a copy of the affidavit of Stanley Abbott sworn herein on the 24th day of March, 1977 and in answer thereto say as follows:-

1. That I am the Registrar and Marchal of the Supreme Court of Trinidad and Tobago. As Marshal of the Supreme Court of Trinidad and Tobago, every warrant for the execution of any prisoner sentenced to death is directed to me and I have the duty and responsibility of carrying the said warrant into execution.

2. That when a convicted person is ordered to suffer death by hanging, every effort is made to ensure that the execution is carried out without suffering. Everything is done to ensure that death results from dislocation or fracture of the cervical vertebrae with instantaneous loss of consciousness.

3. That the condemned prisoner, before execution, is weighed and measured to ensure that on execution death will be instantaneous on the drop.

4. That in the case of every execution which I have attended I verily believe that death according to the medical report has in fact been caused by dislocation or fracture of the cervical vertebrae without any pain or suffering.

5. That on the 16th day of March, 1977, I received the warrant given under the hand of the President for the execution of the applicant herein.

6. That I am a Respondent in this High Court matter and as a result I have not carried the said warrant into execution.

Sworn to at the Red House, Port of Spain, on the 6th day of April, 1977.

/s/ G. Benny

Before me,

/s/ R. L. Bynoe.

Commissioner of Affidavits.

Filed on behalf of the Respondents.

In the High Court.

No. 4

Affidavit of Randolph Charles

6th April, 1977.

No. 4.

Affidavit of Randolph Charles.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the Matter of the Constitution of Trinidad and Tobago (Act No. 4 of 1976)

And

In the Matter of the Application of Stanley Abbott a person alleging that the provisions of the Constitution protecting his human rights and fundamental freedom have been are being contravened in relation to him for redress in accordance with section 14 of the Constitution.

And

The Order of the Judicial Committee of the Privy Council dated 20th July, 1976 whereby the appeal of the Applicant was dismissed and the conviction of murder and sentence of death affirmed.

I, RANDOLPH CHARLES of Senior Staff Prison, Golden Grove Road, Arouca, Commissioner of Prisons, have read what purports to be a true copy of the affidavit of Stanley Abbott sworn to and filed herein, and in answer thereto make oath and say as follows:-

1. Except as otherwise stated the facts deposed to herein are within my personel knowledge.

2. On the 16th July, 1973, the applicant Stanley Abbott was convicted of the murder of Gale Ann Benson in the High Court of Trinidad and Tobago, and sentence of death by the said Court in accordance with law.

3. The applicant was committed to prison on the same day under a Warrant of Committment pending execution.

4. On the 9th July, 1974, the applicant's appeal against conviction and sentence was dismissed by the Court of Appeal of Trinidad and Tobago.

5. His appeal to the Judicial Committee of the Privy Council against conviction and sentence was dismissed by the Board on the 20th July, 1976.

6. Execution of the death sentence has not yet been carried out on him.

7. On the 26th day of July, 1976, the applicant, through his solicitor, presented a petition to the then Governor-General for consideration of the Advisory Committee on the Power of Pardon. The said petition was considered by the Advisory Committee on the Power of Pardon on the 23rd day of February, 1977, and was refused.

8. Act No. 4 of 1976 which established the Republic of Trinidad and Tobago and enacted the present Constitution in lieu of the Former came into operation on the 1st August, 1976.

9. Thereafter, a General Election was held in Trinidad and Tobago on the 13th September, 1976.

10. On the 13th December, 1976 the present Minister of National Security was designated as the Minister in accordance with whose advice the power of the President with respect to the Perogative of Mercy may be exercised. To the best of my information, knowledge and belief, the other members of the Advisory Committee on the power of pardon were appointed on or about that time or shortly thereafter.

11. It is not true to say that the applicant has experienced unspeakable anguish whilst in prison. He is visited by his relatives and friends, and by a Chaplain of his denomination. He is allowed to communicate with his relatives, friends, and legal advisers of his choice. He is permitted to see his Counsel whenever his Counsel so requests. Further, he is permitted regular exercise and sunlight.

12. His cell is comfortable, properly ventilated and is equipped with bed, bed linen, and reading material. There is an electric fan in the corridor, and a radio speaker in each division. The cell is not dark and has adequate natural light during the day time, and is lit by electric light at night. The Execution Chamber is kept closed at all times, and is not exposed to public view.

13. The applicant is provided with proper ammenities,

In the High Court.

No. 4.

Affidavit of Randolph Charles

6th April, 1977.

(continued)

including proper food, clothing, and a supply of daily newspapers. Medical attention is available.

14. It is not true to state that the applicant is merely left to languish in a prison cell, and that he has experienced unspeakable anguish as a result.

15. There has been no procrastination on the part of the Authorities, nor has the applicant been subjected to any cruel and unusual treatment and/or punishment, or torture of any kind.

16. It is not true to say that the applicant suffers from sleeplessness, and that no effort is made by the authorities to prevent or appease the situation.

17. On the 7th day of March, 1977, the President, acting in accordance with the advice of the designated Minister, commuted the sentence of death imposed on Edward Chadee to one of life imprisonment. The petition of the applicant herein was refused by the Advisory Committee after consideration thereof.

18. To the best of my knowledge, information and belief, every petition requesting the exercise of the Prerogative of Mercy is determined by the Advisory Committee on the Power of Pardon on its particular facts.

Sworn at the Red House, St. Vincent Street, Port of Spain, this 6th day of April, 1977.

/s/ Randolph Charles

Before me

/s/ R. L. Bynoe

Commissioner of Affidavits.

Filed on behalf of the Respondents.

No. 5.

Affidavit of Stanley Abbott

13th April, 1977.

No. 5

Affidavit of Stanley Abbott.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the High Court.

No. 5.

Affidavit of Stanley Abbott.

13th April, 1977.

(continued)

In the Matter of the Constitution of Trinidad and Tobago (Act No. 4 of 1976)

And

In the Matter of the Application of Stanley Abbott a person alleging that the provisions of the Constitution protecting his human rights and fundamental freedom have been and are being contravened in relation to him for redress in accordance with section 14 of the said Constitution

And

The Order of the Judicial Committee of the Privy Council dated 20th July, 1976, whereby the Appeal of the Applicant was dismissed and the conviction of murder and sentence of death affirmed.

I, STANLEY ABBOTT of State Prison, Frederick Street, in the City of Port of Spain, in the Island of Trinidad have read what purports to be a true copy of the affidavit of Randolph Charles and Geroge Ramoutar Benny sworn to on the 6th day of April, 1977 and filed herein and in answer thereto make oath and say as follows:-

1. I was not informed that my application for Mercy could not have been considered until a new Mercy Committee was appointed under the Republican Constitution. I am advised by my Counsel and verily believe that the facts disclosed in paragraphs 7 to 10 of Randolph Charles' Affidavit inclusive demonstrate unexcusable procrastination. During this period of time I lived a life of extraordinary stress, the experience was harrowing and the agony unbearable. I felt as if my entire personality was brutalised. The torture I went through makes me feel broken and physically and mentally unbalanced. At times I felt I could no longer tolerate the pain, the anxiety and fear and at such times I wished to put an end to all the suffering. The uncertainty of the wait was terrible and traumatic.

2. In answer to paragraphs 11, 12 and 13 of Randolph

In the High Court.

No. 5.

Affidavit of Stanley Abbott

13th April, 1977.

(continued)

Charles' affidavit I wish to say:-

(a) The visits by relatives and friends are very restricted. My communications with relatives, friends and legal advisers have been censored and there have been many complaints by my legal advisers, relatives and friends of not receiving my communications. I am permitted to see my Counsel but in order to see him I am placed in another cage which measures about three feet by four feet with a chair inside and I have to talk to him from behind bars. The exercise and sunlight are very restricted and limited. There are no mirrors and I have not seen my face since 1975 when I used a mirror at the Part of Spain General Hospital. The pale complexion of my skin will support the allegation of insufficient sunlight and torture.

(b) I have read a true copy of the affidavit of Father James Tiernan a former Prison Chaplain which affidavit was tendered in the proceedings No. 3290 of 1973 and was sworn to and dated 7th day of February, 1974 and say that the contents therein are true and correct to the best of my information and belief. Beds are now provided in each Death Row room and there is an improvement in the amount of exercise. I attach hereto a copy of the said affidavit and it is marked "S.A. 1". I also attach a photocopy of a front page story of the Trinidad Guardian dated 14th day of February, 1975 in which Sister Marie Therese described the condemned cells as "men in cages" and the condition as "appalling". The said clipping is marked "S.A.2". I also enclose clippings of the Trinidad Guardian dated 14th February, 1975 marked S.A.3" in which The Roman Catholic Archibishop of Port of Spain condemned capital punishment and another one dated 15th November, 1974 and marked "S.A.4" in which Hindu and Muslim Priests condemned hanging and the facilities at the condemned cells.

(c) The condemned cells are far from comfortable and are not fit for animals to live in. The ventilation is inadequate and the natural light insufficient.

(d) Although the Execution Chamber is kept closed

and not exposed to public view since I am in death row sixteen persons have been hanged and I actually heard the noise of the death trap when they were hanged. The cruelty I suffered seeing the last days of some of these victims and hearing the death trap served as a public premeditation to me which caused me great sufferings.

(e) The amenities mentioned in paragraph 13 are far from adequate. As a matter of fact they are primitive. Whilst I was in prison I contracted measles and later got jaundice and I am still suffering with it and need specialised treatment. As a result of this illness I have been hospitalised on three occasions at the Port of Spain General Hospital in 1973, 1974 and 1975 for periods of five weeks, 10 weeks and 1 week respectively. In addition to jaundice I have a severe eye problem for the last eight months. I cannot see well as a result of this problem and all I am given is eyedrops. I have made several requests to see an eye specialist which were refused and last week I was offered to be taken to the Port of Spain General Hospital. Prison officer Caesar continuously taunts me by making signs and comments to me. He demonstrates with his hands around his neck how I will be hanged. I made several complaints about it and the authorities wanted to send Caesar with me to the Hospital. I begged for another officer to take his place which the Supervisor refused. I am terribly afraid of Caesar and when I see him it affects me mentally. I just could not go with him to the Hospital last week. Further I cannot take vitamins as it gets me ill and I suffer from chronic constipation.

(f) Paragraphs 14, 15 and 16 of Randolph Charles' affidavit are denied.

(g) In answer to the affidavit of Mr. George Ramoutar Benny Iask Your Lordship to take judicial notice of the following:-

(a) The British Royal Commission on Capital Punishment (1949 to 1953) Cmnd 8932 and in particular the following paragraphs:-

(1) Paragraph 732 - Hanging "Caused death by a physical shock of extreme violence, and leaves the body with the neck elongated."

In the High Court.

No. 5

Affidavit of Stanley Abbott

13th April, 1977

(continued)

(2) Paragreph 708 - "If capital punishment were now being introduced into this country for the first time, we do not think it likely that this way of carrying it out would be chosen".

(b) The House of Lords Debate Vol. 306 p. 1160 - 17 December, 1969.

(1) Lord Morris of Borth-y- Gest - "Capital Punishment is something abhorrent in itself".

(c) Lord Gardiner former Lord Chancellor of Debate on a Motion in the House of Lords to reintroduce Capital Punishment in the United Kingdom which said Motion failed "We did not abolish that punishment because we sympathised with traitors, but because we took the view that it was a punishment no longer consistent with our self respects."

(d) The accumulating scientific literature verifying the mental torture apprehending ones own execution. In the Hearings before the Sub-Committee on Criminal Laws and Procedures of the Senate Judiciary Committee of the United States of America (90th Congress, 2nd Sessions 1968, p. 127).

(1) Death Row is described as a "grisly laboratory - the ultimate experimental stress, in which the condemned prisoners personality is incredibly brutalised."

(2) The strain and existence of Death Row is very likely to produce ------- acute psychotic breaks."

(3) The abhorrent physical spectacle of the execution itself was described by the Warden of San Quentin Prison to the Senate Judicary Committee:-

"The day before an execution the prisoner goes through a harrowing experience of being weighed, measured for length of drop to assure breaking of the neck, the size of the neck, body measurements, etcetera. When the trap springs he dangles at the end of the rope. There are times when the neck has not been broken and the prisoner strangles to death. His eyes pop almost out of his head, his tongue swells and protrudes from his mouth, his neck may be broken, and the rope

many times takes large portions of skin and flesh from the side of the face that the noose is on. He urinates, he defecates and droppings fall to the floor while witnesses look on, and at almost all executions one or more faint or have to be helped out of the witness room. The prisoner remains dangling from the end of the rope for from 8 to 14 minutes before the doctor, who has climed up a small ladder and listens to his heart beat with a stethoscope pronounces him dead. A prison guard stands at the feet of the hanged person and holds the body steady, because during the first few minutes there is usually considerable struggling in an effort to breathe.

(4) "The existence of the death penalty has an indelible and harmful effect on the administration of justice".

(5) "The bodies were cut down after fifteen minutes and placed in an antechamber, which I was horrified to hear one of the supposed corpses give a gasp and find him making respiratory efforts, evidently a prelude to revival. The two bodies were quickly suspended again for a quarter of an hour longer Dislocation of the neck is the ideal aimed at, but, out of all my post-mortem findings, that has proved rather an exception, which in the majority of instances the cause of death was strangulation and asphyxia."

(e) "The United Nations Report on Capital Punishment 1962 to 1965".

(f) Trinidad and Tobago in 1962 signed the Declaration of Acceptance of the obligations contained in the Charter of the United Nations on the 18th day of September, 1962. A photocopy of the publication of the United Nations showing this is attached hereto and marked "S.A.5".

SWORN to at the State Prison Frederick Street, in the City of Port of Spain, this 13th day of April, 1977.

/s/ Stanley Abbott

Before me,

/s/ Geo. H. Sealy

Commissioner of Affidavits.

In the High Court,

No. 6

Affidavit of Randolph Charles

18th April, 1977.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the Matter of the Constitution of Trinidad and Tobago (Act No. 4 of 1976)

And

In the Matter of the Application of Stanley Abbott a person alleging that the provisions of the Constitution protecting his human rights and fundamental freedom have been are being contravened in relation to him for redress in accordance with section 14 of the Constitution.

And

The Order of the Judicial Committee of the Privy Council dated 20th July, 1976 whereby the appeal of the Applicant was dismissed and the conviction of murder and sentence of death affirmed.

I, RANDOLPH CHARLES of Senior Staff Prison, Golden Grove Road, Arouca, Commissioner of Prisons have read what purports to be a true copy of the Affidavit of Stanley Abbott sworn to on the 13th day of April, 1977, and filed herein and in answer thereto make oath and say as follows:-

1. No complaint was ever made to me by the Applicant Stanley Abbott or by any other person on his behalf about the alleged conduct of Prison Officer Caesar.

2. It is not true to say that Prison Officer Casear has taunted the applicant, Stanley Abbott, by making any signs, any comments or any demonstration whatever.

Sworn at the Red House, Port of Spain on the 18th day of April, 1977.

/s/ R. Charles

Before me,

/s/ R. L. Bynoe

Commissioner of Affidavits.

Filed on behalf of the Respondents.

Judge's Notes of Evidence.

In the High Court.

No. 7

Judge's Notes of Evidence

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the Matter of the Constitution of Trinidad and Tobago (Act No. 4 of 1976)

And

In the Matter of the Application of Stanley Abbott a person alleging that the provisions of the Constitution protecting his human rights and fundamental freedom have been are being contravened in relation to him for redress in accordance with section 14 of the said Constitution

And

The Order of the Judicial Committee of the Privy Council dated 20th July, 1976, whereby the appeal of Applicant was dismissed and the conviction of murder and sentence of death affirmed

Before the Honourable

Mr. Justice Clinton Bernard

Ramesh L. Maharaj for the Applicant.

Clebert Brooks, Ag. Deputy Solicitor General and Mrs. Jean Permanand, State Counsel for the Respondents.

S U B M I S S I O N S.

Brooks refer to Applicant's Affidavit in reply of the 13/4/77 and filed on said date.
Submits affidavit should be confined to affidavit of Respondent.
Submits that para. 2(e) of affidavit of 13/4/77 raises new matters.
Complains with particular reference to latter part of para 2(e) re allegation against P.O. Caesar.

Maharaj:

We deal with the observation if and when it is necessary.
Brooks seeks leave to file affidavit in answer to para. 2(e) of Abbott's affidavit of 13/4/77.

In the High Court.

No. 7

Judge's Notes of Evidence.

(continued)

Maharaj has no objection.
Leave is granted to file affidavit.
Para. 2 (e) of Applicant's affidavit of 13/4/77 to be filed by Monday - 18-4-77.
Court indicates to Maraj that he had been counsel at First Instance and in the Court of Appeal in the matter of Michael de Freitas -vs- Benny and enquired whether Counsel had any objection to his hearing the matter.
Counsel for Abbott indicates that neither he nor his solicitor nor his client had any objection. He had in fact discussed this very matter with them and they had no objection.
Court refers to O. 55 R. (2).No indications as to which provisions of the Constitution.
Maharaj submits that he is alleging that sections 4(a), (b), (d), and sections 5(2)(b) infringed.
Seeks leave for notice of motion to be amended accordingly.
Brooks has no objection.
Leave is granted:
Maharaj opens:

(a) Fundamental rights in S.4(a), (b), (d) and 5 (2) (b) have been infringed.

(b) Applicant not alleging that hanging is unconstitutional in light of provisions of Offences against the Person Ordinance Ch. 4 No. 9 and Criminal Procedure Ordinance Ch. 9 No. 3.

(c) Executive act of carrying out sentence of death which was pronounced by Court of Law unconstitutional because -

(i) of procrastination in carrying out punishment which resulted in applicant being tortured. This caused cruel and unusual treatment.

(ii) Torture is double punishment being sentence of torture and death by hanging. Illegal and unconstitutional.

(iii) On particular facts and circumstances of this case the uncertainty and the wait constitute procrastination and amounts to denial of life without due process of law.

(iv) Had applicant been informed shortly after Privy Council's decision of the date for his hanging and hanged within a reasonable time there could have been no complaint on the basis of the Malik Case.

(e) Facts in Malik showed there was eight (8) day period - 12 - 30th Dec. 1973.

(f) Procrastination on the part of the State not alleged in Malik's Case. Decision was based on issue that procrastination was that of Malik himself.

(g) In this case procrastination is that of the State executive arm of State acting through the Ministry of National Security. Torture and threat to carry out sentence of death constitute cruel and unusual punishment in this case. As a result section 5(2) (b) is infringed.

Maharaj refers to:

De Freitas v. Benny 1975 3 W.L.R.338 at 390 /para. "g"/ 392 / para. "f" and"G".

2. Submits that by virtue of S. 14 of Constitution Court has power to restrain sentence of death because Trinidad & Tobago as mentioned in para. 5 of Applicant's affidavit. Declaration of Acceptence of Charter of U.N.on 18/9/62. Article 5 Universal Declaration of Human Rights. State has obligation by virtue of the U.N. Charter to carry out obligations in the Charter. Court can act within S. 14 of the Constitution since the State has failed to observe by its municipal law its obligations under the Charter of U.N.

3. Section 4(b) and (d) infringed. Two persons charged. One spared. In those circumstances there was not equality before the law.

RANDOLPH CHARLES sworn states and cross-examined by Maharaj:

First time I know Stanley Abbott given a date to be hanged was 14/3/77. He was not informed. To date he has not been informed. There was an application by Stanley Abbott for mercy on 26/7/76. As far as I know he has not been informed of the progress of his application. Not Commissioner of Prisons in 1975. I was Commissioner of Prisons in July, 1976. Not in any position to say whether Stanley Abbott has lost weight - I visit the division in which Stanley Abbott is housed approximately twice per week.

I have not noticed any appreciable change in the applicant, Stanley Abbott as far as his physical appearance is concerned. I don't spend much time in the death cell. Death cell is 9' x 6'. There is a bed. Size is about 3' 6".

There is a flourescent light over the cell door. It is not kept on all day and all night. They are off during the day and kept on during the night.

There are exercises for condemned whenever possible every day. They are however exercised quite frequently. Exercise is approximately for one hour. They are taken out

In the High Court.

No. 7

Judge's Notes of Evidence

(continued)

into the yard. Yard is open. They do not go out all at one time. They go in batches. Exercise is usually on mornings.

All mails are censored. Not in a position to say how applicant Stanley Abbott feels.

Can't say how he felt from July, 1976 to the present time.

Re-examination (Brooks):

Mails are censored because Rules require that they be censored. Done as a security measure to ensure that nothing comes that could constitute a security risk. This could come in through the main.

Stanley Abbott not informed of date of his execution because of this motion which has been brought.

TO COURT:

By "all" mails I refer to mail for prisoners including those who have not been sentenced to death.

When I speak of Rules I refer to the Prison Rules. They were passed by Parliament. Rules are Prison Rules 1950. They were made before Independence. They are still in force to date. Sharp cutting instruments, razor blades and poisonous substances could come in the mails.

Brooks seeks leave to ask further question: Granted.

Abbott made complaints to me from time to time. Sometime he complained about the food. He asked for extra letters. I cannot remember any other complaints.

TO MAHARAJ:

It is not within my knowledge that applicant was injured while he was in my custody.

GEORGE BENNY sworn states:

Name is George Benny.

By every effort as referred to in para. 2 of my affidavit I mean that prisoner is weighed the day before hanging. His height is taken. According to his weight and height the length of rope is given. There is a standard table. We work out the length of rope according to this table. By "We" I mean the Commissioner of Prisons and myself. We work out the length of rope independently and then confirm it.

His nect is measured after he is weighed and length of rope determined. Purpose of weighing is to ensure breaking of the neck. Weight and height of person are relevant to length of rope which is to be used.

Commissioner of Prisons and I work by a standard

table. It came from England years ago. Person stands on trap door. When trap door is removed he drops. Prisoner dangles on rope for about 1 hour.

I attended many hangings. Can't say whether prisoners' eye pop-out after hanging because his head is covered.

There are times when a prisoner urinates. It happens with the drop.

A doctor is always present. He is a prison doctor, a general practitioner. A doctor examines the day before. Another doctor is present at the hanging. One doctor performs the post-mortem. Not in a position to say whether he is a specialist.

After hanging we go to the Commissioner of Prison's Office. We remain for an hour and then return to the body. Group comprises the Commissioner of Prisons, doctor, chaplain and myself.

After the hour the prisoner is taken down and then the post-mortem is performed.

After hanging it is rare that the body of person moves about. I have observed only two. Over a period of 15 years I have observed only two.

MAHARAJ:

Refers to Report on Capital Punishment - Ninety Second Congress Serial No. 29 - physical effect on hanging p. 304 - views of a doctor. Wishes Benny's comment thereon. Brooks objects on grounds:-

1. Irrelevance.

2. Para 2(d)(3) Court asked by applicant to take Judicial notice.

3. Phipson on Evidence - 11th Ed. - p. 48.

4. System of executions in U.S.A. may be different from that in Trinidad and Tobago.

5. Report is based on opinions.

Objections allowed:

Continuing:

Body remains hanging for an hour to ensure that man is properly dead. Won't say that person is held for one hour to ensure that he is properly dead.

In the High Court.

No. 7.

Judge's Notes of Evidence

(Continued)

Doctor is present on the afternoon before when the rope is measured and tested.

In the case of the (2) cases of dangling the body twitched for a few seconds. We waited to see that it was still and then we left.

I attend post-mortem. I saw impressions of the rope round the neck.

Pratice for 1 hour has always been the pratice.

I am sure that it is to ensure that person is properly dead.

One of the hangmen pulls the lever. He is not a doctor. He only does a mechanical act by pulling the lever. I give him the nod to do this.

Re-examined (Brooks):

Actually execution takes between half minute to 1 minute. Between this time it is all over. Would say that it is only a matter of formality that person remains hanging on the rope.

Since hanging is by rope marks on the neck are to be expected.

We return to body after 1 hour to make assurance doubly sure.

Adjourned to Monday 19/4/77 at 2p.m.

Continuing:
19th April, 1977:
Appearances as Before:
MAHARAJ:
SUBMISSIONS:

A Rights under 4(a) and5(2) (b):

1. Violation because of procrastination by Executive in hanging applicant.
2. Apart from delay particular circumstances of this case have aggravated the effects of procrastination which have resulted in an aggravation of the torture - the cruel and unusual treatment.
3. Applicant has a legal right to be hanged after 16/7/76. Also a legal right to be given treatment which was not cruel and unusual and a legal right not to have his life taken without due process of law.
4. Applicant has no legal right for mercy. Mercy purely a case of discretion - De Freitas v. Benny 1976 A.C. 239 at page 247 (Letter 'F').

5. Since no legal right to mercy obligatory on the carry out the sentence of the court within reasonable time. See:- Cooley's Constitution Limitation 1927 .... Edition - Vol. 1 p. 548. Hartung v. People 22 N.Y. 95.
6. Hartung's Case is authority for proposition that delay and sentence is double punishment and so breach of provisions S. 4(a) and S. 5(2)(b). If Parliament cannot

pass such a law it follows that the Executive act carrying out the sentence cannot be accompanied by delay. If in fact there is delay on part of the Executive, Hartung's case applies.

7. Section 14 applies to executive, judical and legislative acts:

Refers:-

(i) Hinds and Jackson v. R. 1976 1 A.E.R. 353 at 360 (g to h) - judgment of Lord Fraser.

(ii) Thornhill v. Attorney General - No. 39/74 (Judgment of Rees, J.A. at p. 5,7 (Second to last para.)

(iii) Harrikissoon v. A.G 59/75 (Judgment of Rees, J.A. at p. 3)

8. Section 51 of Judicature Act - 62 - Stay of Execution on Appeal.

9. Section 14 (5) provides for Stay of Execution after Constitutional motiom is exhausted. It is a recognition of the principle that sentence of the court should be carried out if there is no appeal pending or redress sought.

10. Unless legal proceedings are pending no legal right of the state to have condemned locked up. This amounts to torture. Delay is denial of Justice - See:

(a) R.V. Ogle 11 W.I.R. 439 is authority against delay.

(b) Habeas Corpus - Shah - 1976 - page 133 - Habaes Corpus a delay in trial.

(c) European Convention of Human Rights 1975 - Francis Jacob - Article 5 and 6 - Right of trial within a reasonable time - page 78 - Wenhoff's case.

(d) International Commission of Jurist Review - June 1976.

Explanation by State on question of delay:

(a) No definite evidence as to when Committee of Mercy appointed.

(b) Totally irrelevant as to when committee appointed.

(c) Act is a personal act of the Governor General. Despite change from Monarchy to Republic, the power remained as personal power to Head of State.

(d) Submits that onus on State to exercise legal duty of State and legal right of applicant to be hanged.

Further submits that evidence of State in paras. 7 - 9 demonstrates inexcusable procrastination because no explanation has been given by the State as to why sentence was not carried out. No reasonable or proper explanation given for delay in not executing after July, 1976.

Refer to:

In the High Court.

No. 7.

Judge's Notes of Evidence

(Continued)

Detention - Barry Rose - 1975 -
(a) P. 65 - paras. 37, 38 - Torture.
(b) P. 68.
(c) Ahamad v. Inner London Education Authority. The times - 22 March, 1977.
(d) Human Rights Review - Vol. 1 - Spring of 1976 - Oxford University Press - page 1.
(e) R. v. Bhajansingh The Times - 22/5/75
(f) Maddington v. Miah 1974 1 W.L.R. 683.

Acts of Executive constitute cruel and unusual treatment within the provisions of the European Convention on Human Rights so Court could act here on basis of this Convention.

Court:

Q. Is Trinidad and Tobago a part to that Convention?
A. No my Lord.

Court of Trinidad and Tobago ought to take findings of the European Court on Human Rights into consideration. Court should adhere to this Convention.

Refers to:
(a) I.C.J. Review - p. 40. (Draft principles for a Code.)
(b) Paras. 11, 12, 13, 14 and 15 of Charles' Affidavit.
(c) Applicant's Affidavit - Paras. 1 and 2.

Agony endured by applicant was torture and constitutes breach of S. 5(2)(b) - Relies on paras. 1 and 2 as constituting breach of S. 5(2)(b).

Incumbent on State to show that applicant in good mental and proper condition.

Submits that evidence establishes that applicant suffered severe physical and mental pain and amounts to cruel and unusual treatment.

Evidence also shows applicant underwent torture during period applicant was in detention.

Failure to inform applicant of progress of his application to Mercy Committee constitutes torture and cruel and unusual treatment.

Punishment which applicant will suffer is disproportionate to sentence.

Assuming that acts of torture or taunting and/or of delay did in fact take place this will constitute:
(a) Breach of 4(a) and/or
(b) Breach of 5 (2))(b).

Refers:

Constitution of U.S.A.- published by Congressional Research Service - 1072 - p. 1252. 1253. 1254, 1454
Coffin v. Richard 325 U.S. Rept., P. 887.

Executive given power to exercise a judicial function by inflicting a punishment apart from the punishment imposed by law in that it would have inflicted a punishment of torture which was not authorised by the sen-

tence of the Court i.e. procrastination in itself and other facts which amount to torture. This is a punishment which Executive has no jurisdiction to impose. Relies on Hinds v. R. supra at 370 (Letter d.)

Act of Executive amounted to an increase in sentence.

UNIVERSAL DECLARATION OF HUMAN RIGHTS:

Since Trinidad and Tobato is a signatory to the Universal Declarationof Human Rights thus having regard to the preamble Court ought to frown on barbaric, cruel and unusual treatment.

Duty of state to effect punishment and if not effected within a reasonable time it is barbaric or falls under S. 5 (2) (b) - cruel and unusual treatment.

Refers to:

De Freitas v. Benny supra at page 243 - Letter "E") De Freitas' case am authority for the above proposition.

De Freitas' case - p. 243 (Letter "D"), 245 (Letter "F") 246 (Letter "E" 247 (Letter "D").

Prosrastination, uncertainty as to date of sentence, threat of death, prison conditions, torture and anguish constitute a breach of S. 5 (2)(b) - The sum total of these factors constitute a breach of S. 5(2)(b).

SUBMISSIONS:

(a) Procrastination a breach of -
(i) Section 4(a) and/or 5 (2)(b):

(b) Continuation of procrastination, uncertainty as to date of sentence, threat of death, prison conditions, torture and anguish - a breach of S. 5(2)(b).

(c) Executive given power to exercise a judicial function by inflicting a punishment by its delay over and above the sentence of death imposed by Court. This amounts to torture. It is a double punishment and therefore a breach of S. 5(2)(b).

(d) In addition if applicant's life is taken in that setting it will be a violation of section 4(a).

(e) Threat of death by itself which exists in this case constitutes cruel and unusual treatment and therefore a breach of S. 5(2)(b).

(f) If Court accepts that provisions of Universal Declaration of Human Rights is legally in force, in Trinidad and Tobago Court could act by virtue of S. 14 and has power to stay the sentence of death and impose a term of life imprisonment. Court can grant a respite.

Adjourned to 20/4/77 at 2p.m.

Wednesday - 20th April, 1977.

Appearances as before:

Sections 4(b) and 4(d):

Maharaj submits applicant denied rights in 4(b) and 4 (d).

Maharaj indicates that he is no longer relying on Section 4(b).

Public authority must provide equal treatment to citizens.

President is a public authority under Section 4(d).

In the High Court.

No.7.

Judge's Notes of Evidence

(Continued)

When the authority acts under 4(d) there must be demonstrated that there was equality of treatment.
Refers to:
(a) Para. 10 of Applicant's affidavit of 24/3/77;
(b) Para. 17 of Charles' affidavit of 6/4/77.
Where there is power to remit or commute a sentence by the President he must demonstrate that he has complied with 4(d).
A higher value placed on life of Chadee that of Abbott's.
Repondents had to demonstrate in their affidavit that there was no breach by the President of Section 4(d). Respondents have failed to do so.
Action of Eexcutive through the President in this case demonstrated a clear breach of S4 (d).
Applicant has by affidavit of 24/3/77 - para. 10 shown a breach of S. 4(d).
ADDITIONAL SUBMISSIONS:
1. The execution of the applicant in this case would violate Section 4(a).
(a) Refers to:
(a) Jury Ordinance - Ch. 4 No. 2 - Section 16.
(b) Abbott v. R. 1976 63 C.A.R. 241 at p. 248 - 250.
(Dissenting Judgment of Wilberforce and Davies, L.J.J.)
(b) Majority decision of Privy Council in Abbott's case raises uncertainty as to applicant's guilt beyond all reasonable doubt on the charge of murder for which applicant was convicted.
(c) On the authority of the dissenting judgment in Abbott's case, the threat to life is breach of 4(a). Reliefs claimed in notice of motion at (a) (b) (c) (d) (e) and (f) prayed for.
Maharaj now submits that court has no power to commute sentence of death to life imprisonment. Court may declare the threat of carrying out the sentence of death unconstitutional, null, void and of no effect under section 14 and order that Government of Trinidad and Tobago and/or Registrar of Supreme Court and/or the Commissioner of Prisons be restrained from executing the applicant.
Maharaj withdraws (c) of the notice of motion and substitutes a prayer in terms above.
Maharaj ends at 2.45 p.m.
BROOKS submits:
1. Imposition of the death sentence imposed on the applicant by a court of law - court of competent jurisdiction and any subsequent execution of the death penalty will be as a result of due process of law:
(a) The facts of the case
(b) Lassalle v. A.G. 18 W.I.R. 379 - Phillips, J.A. due process - See p. 391 / Letter "E"and "H", 392 389.

(c) Rights in S. 4 are common-law rights,

(d) Any sentence of death imposed upon applicant and any subsequent execution are the result of due process of law.

2. THere has been no procrastination on the part of the Executive in the carrying out of the death sentence of the applicant.

(a) Application to Privy Council in forma paupris refused.

(b) On 26/7/76 applicant petitioned the Advisory Committee on Power of Pardon for mercy.

(c) Train of events took place after. Events in para. 8 - 10 of R. Charles' affidavit of 6/4/77.

(d) Six days after presentation of Abbott's petition for mercy a new constitution came into force.

(e) Advisory met and sat on 23/2/77 and considered applicant's petition.

(f) On 7/3/77 applicant's petition for mercy was refused by Advisory Committee.

(g) Section 3 - Conistitution of Republic Act 1976.

(h) Government Notice 116 No. 6 of 1976 fixed appointed date for coming into operation of present Constitution to 1/8/76.

(i) Former Advisory Committee of Mercy abolished from 1/8/76. It ceased to function from this date.

(j) General election on 13/9/76 in Trinidad-Court to take judicial notice of this fact. Cabinet had to be formed and ministers to be appointed.

(k) Section 88 of the Constitution.

3. Assuming that there was delay, that delay does not constitute a breach of due process clause in 4(a):-

(i) No time limit prescribed by law for carrying into effect the death penalty. No enactment, no Statute no provision in the Constitution which provides that death penalty should be carried out within the prescribed time.

(ii) De Freitas v. Benny 1975 3 W.I.R. 388 - 393 /Letter "A" "D" and "E"/, 394 /"B".

(iii) De Freitas case shows that date of execution exclusively in the discretion of the President acting on advice of Minister under Section 87(3) Sec. "D".

(iv) De Freitas v. Benny - Civil Appeal 13/74 - Judgment of Hyatali, C.J. at page 10.

(v) No inordinate delay in this case. In any event inordinate delay does not constitute a breach of the due process Clause in 4(a).

(vi) To obtain redress under section 14 applicant must show a breach of due process by the State or an organ of the State.

In the High Court.

No. 7.

Judge's Notes of Evidence

(Continued)

(vii) No breach of S. 4(a) by the Executive or organ of the State. No breach os S. 4(a) by any individual of the State.
Applicant has not shown this.

(viii) Sec. 4 of Offences against the Person Ordinance Ch. 4 No. 9.

(ix) Harrikissoon v. A.G. 59/75 - p. 3.

(x) Thornhill v. A.G. - p. 7.

(xi) Arjoon v. A.G. 5/76 - p. 3 and 4.

(xii) De Freitas v. Benny is relied upon on question of inordinate delay.

Adjourned to 21/4/77 - 2p.m.

Thursday, 21st April, 1977;
Appearances as Before:
Part-heard on the 21-4-77:
BROOKS continues:

Once the Privy Council had dismissed applicant's appeal his legal rights ended. Mercy begins when all legal rights have ended. .

On the facts here delay if any is not unexplained.
Clough v. Clough 1968 1 A.E.R. 1179.
Allan v. Mc Alpi 1968 1 A.E.R. 543.

4. Submits that President is not a public authority. President is head of State - S. 22.
Refers to:-

(a) Halsbury Laws - Vol. 30 - p. 62 - p. 1317 Definition of public authority).

(b) Bells - Crown Proceedings - p. 67 - Examples of public authorities.

Power of pardon prerogative of State - Section 6 of Act - Power is exercisable by President - Sec. 6(2). Its exercise is provided for by Sec. 87, 88 and 89.

5. To obtain redress under Section 5(2) of the Constitution applicant must show that Parliament has enacted a law which has been passed since the Republic Constitution which imposes cruel and unusual treatment and a contravention or infringement of that law by the State or organ of the State in relation to the applicant.

(a) Refers to:-
Odgers - Deeds and Statutes 5th Edition - p. 374 ("May")

(b) Applicant has not shown that any law has been passed since the appointed date which imposes cruel and Unusual treatment in relation to him;

(c) No evidence of any cruel or unusual treatment imposed or inflicted upon the applicant by the State or any individual acting on behalf of the State.

(d) Any mental anguish suffered by applicant was self imposed.

(e) As to future laws Benny v. De Freitas supra; D.P.P. v.

Nasralla 2 A.C. 238 are standing authorities.

(f) Applicant must point to a law.

6. Submits that offences against the Persons Ordinance makes death sentence for murder mandatory, It was a law in force before the commencement of the Constitution and nothing in sections 4 and 5 can invalidate that law. No act which prima facie falls under 4(a) or 4(d) or even 5(2)(b) could give rise to redress if it is caught by existing law having regard to Section 6 of the Constitution. The position is the same with Criminal Procedure Ordinance Ch. 4 No. 3. This too was a law in force. Section 59 of the Ordinance relevant.

Refers to: Runwoya v. R. 1966 2.W.L.R. 877, 878, 891.

7. Section 14 of the Constitution and in particular sub-section2imposes only a restraint upon the Court in relation to the State. Provision is subject to State Liability and Proceedings Act 1966.

(i) Section 22 of State Liability and Proceedings Act 1966. Injunction does not lie against an officer of the State.

(ii) Act No. 8 of 1976 - Section 2 - State substituted for Crown.

(iii) Order for restraining the servants of the State from executing the applicant is in the form of an injunction. It cannot be granted by virtue of Section 22 (2) of the State Liability and Proceedings Act 1966 and 14(2) and (3) of the Constitution.

(iv) Section 14 (2) and 14 (3). These provisions are restrictive.

(v) Registrar of Supreme Court and the Commissioner of Prisons are officers of the State. They perform their functions, as representatives of and on behalf of the State. Order cannot be made by virtue of Section 22 - subsection 4 of Act of 1966.

Refers:

Merrick v. Heathcots - Amory 1955 3 W.L.R. 56.

Jaundoo v. A.G. Julien's Reports - p. 5 V. 19 - 491.

8. Hartung v. People is no authority for any of the propositions advanced by other side.

Refers:

Lassalle v. A.G. W.I.R. 390 (h).

Hartung was decided on a Statute. Statute itself had provided for a penalty of hard labout plus punishment of death.

Not the case here.

9. Ogle's case not applicable or relevant. Case dealt with admissibility of depositions. No satisfactory explanation for delay given in that case.

10. Time does not run against the state.

Refers:

In the High Court.

No. 7.

Judge's Notes of Evidence

(Continued)

(a) Halsbury's Laws - 3rd Ed. Vol. 7 - Para. 540.
(b) R. v. Ogle 11 W.I.R. 439 /Letter "F"/.

11. Affidavit of R. Charles shows applicant received proper treatment.

12. As to treatment meted out to Applicant and Chadee, this is in absolute discretion of the Committee of Mercy and of the President. See Section 87 - 89.

13. Threat of hanging and delay do not amount to breach of due process Clause in / S. 4(a).

14. U.N. CHARTER AND TREATIES.

Adjourned to 22/4/77 at 1 p.m.
Court rises at 3.45 p.m.

Tuesday - 26th April, 1977:
Appearances as Before:
Part-heard on 21/4/77:
BROOKS continues:
U.N. CHARTER AND TREATIES:

1. Treaty does not form part of the internal law of this country unless it made so by parliament.

2. This is the Common Law of Trinidad and Tobago and it is same in England.

3. If treaty conflicts with the internal law, the latter prevails.

Refers:

(i) Law of Treaties - Lord Mc Nair 1st Edition - p. 81.

(ii) A.G. of Canada v. A.G. for Ontario & Others 1937 A.C. 326 at 347 (Judgment of Lord Atkin.)

(iii) Wade v. Phillips - Constitutional Law - 7th Edition - p. 274.

(iv) R.V.. Secretary of State for Home Affairs ex parte Bhajansingh 1975 2 A.E.R. 1081, at 1083 (Para. "B").

(v) Supreme Court of Judicature Act 1962 - Section 12.

4. Common Law of England is still the Common Law of Trinidad and Tobago. See Section 12 of Supreme Court of Judicature Act 1962.

5. Charters all come within the framework of a treaty.

6. No evidence of cruel and unusual treatment meted out to applicant at all or within the concept of the Charters. No evidence to show any conflict with the Charter of the United Nation.

PRISON RULES:

1. Made under Prison Ordinance - Ch. 11 No. 7.
2. Rules made under Ordinance.
3. Rules 294 - 296.
Part V - Special Rules for Particular Classes of Prisoners.
Prisoners under sentence of death.
4. Rules were existing laws.

5. Views of Tiernan irrelevant to proceedings. His private opinion is not for the Court but for Parliament. Similarly in the case of Sister Marie Therese.
6. Complaints in applicant's affidavit not cruel and unusual treatment.
7. Dissenting judgment cannot have the force of cruel and unusual treatment.

Maharaj in reply:-

1. Refers:
   (i) De Freitas v. R. of74 -
      (a) Corbin J.A.
      (b) Phillips J.A.
   (ii) De Freitas v. Benny A.C. at 239
2. According to De Freitas (Privy Council) delay could be a ground for complaint under 4 (a) and 5(2)(b). Delay after a convicted person has exhausted all his remedies is a ground for complaint under S. 4(a) and 5(2)(b) - De Freitas' case (Privy Council.)
3. Delay inexcusable; Inordinate; Cannot be explained.
4. Section 87 and 88. President could have himself determined whether he would exercise power of pardon.
5. Hartung's case - Cooley's Constitution Limitation - p. 549, 550.
6. Facts in Abbott's case amounted to double punishment and so within principles of Hartung's case.
7. President is a public authority - S. 74.
8. Acts complained of under S. 5(2)(b) not confined to enactments of Parliament - Relies on:
   (a) Hinds v. R. 1976 1 A.E.R. 353 at 360 - Ct.
   (b) Harrikissoon's Case.
   (c) Thornhill's Case.
9. Complaints under 5(2)(b) include administrative and judical acts.
10. Sec. 14(3) of Constitution 22 of State Liability and Proceedings Act 1966. Registrar of Supreme Court and Commissioner of Prisons not protected by Sec. 14(3). Relies on Jaundoo v. A.G. 16 W.I. R. 141 at 148 (Para. (b).

    State in State Liability and Proceedings Act does not include the Registrar or Commissioner of Prisons.
11. Court can by virtue of Sec. 13 hold that the restriction is S. 14 (3) assuming that there is in fact a restriction is not reasonably justifiable in a society that has a proper respect for the rights and freedom of the individual.

Court cannot strike down section 14 - sub-section 3.

Judgment Reserved for Thursday, 5th May, 1977.

Thursday 5th May, 1977.

Appearances as Before:

Motion is dismissed.

No order as to costs.

Judge's Reasons for Decision.

In the High Court.

No. 8.

Judge's Reasons for decision.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

In the Matter of the
Constitution of Trinidad and Tobago
(Act No. 4 of 1976)

And

In the Matter of the
Application of Stanley Abbott a person
alleging that the provisions of the
Constitution protecting his human rights
and fundamental freedom have been are being
contravened in relation to him for redress
in accordance with Section 14 of the said
Constitution

And

The Order of the Judicial Committee of the
Privy Council dated 20th July, 1976, whereby
the appeal of the Applicant was dismissed
and the conviction of murder and sentence of
death affirmed.

Before the Honourable Mr Justice

Clinton Bernard

Ramesh L. Maharaj for the Applicant.
Clebert Brooks, Ag. Deputy Solicitor General and Mrs. Jean Permanand,
State Counsel for the Respondents.

J U D G M E N T

Stanley Abbott (hereinafter called "the applicant") was on the 16th July 1973, convicted at the Port of Spain Criminal Assizes of the murder of Gale Ann Benson. In accordance with the provisions of section 4 of the Offences against the Person Ordinance, Ch. 4, No. 9, he was given the mandatory sentence of death by hanging. He then appealed to the Court of Appeal against his conviction and sentence. On the 9th July, 1974, that Court dismissed his appeal and affirmed his conviction and sentence. Thereafter, he appealed to the Judicial Committee of the Privy Council. On the 20th July, 1976, the Board, by a majority of three to two, dismissed his appeal against conviction and sentence.

2. Six days later - that is to say on the 26th July, 1976

the applicant through his solicitors presented a petition to the Governor-General, as he then was, for consideration by the Advisory Committee on the Power of Pardon (hereinafter called "the Mercy Committee"). His Petition was duly considered by the Mercy Committee on the 23rd February, 1977. It was turned down.

3. On the 16th March, 1977, the Marshal received a warrant under the hand of the President for the execution of the applicant. The issue of that warrant and the functions and authority of the Marshal in relation thereto were in accordance withthe provisions of section 59 of the Criminal Procedure Ordinance, Ch. 4. No. 3 (hereinafter called "the Ordinance").

4. Meantime, by Notice of Motion filed on the 15th March, 1977, the applicant moved the Court under section 14 - subsection 1 of the Constitution of the Republic of Trinidad and Tobago 1976 (hereinafter called "the present Constitution") for the following reliefs:-

(a) An Order that the sentence of death passed on the applicant is unconstitutional, null and void since there was procrastination in carrying out the sentence from 20th July, 1976, after the Privy Council had dismissed the applicant's appeal against conviction for the murder of Gale Ann Benson.

(b) An Order that the Government of Trinidad and Tobago and/or the Registrar of the Supreme Court and/or the Commissioner of Prisons be restrained from executing the applicant.

(c) Alternatively, an Order that the Sentence of death on the applicant be commuted to life imprisonment.

(d) Such further or other relief as the justice of the case may require and which the Court may grant pursuant to the provisions of section 14 of the Constitution of Trinidad and Tobago.

(e) Such further or other relief as the justice of the case may require including such orders, writs, and directions as may be necessary or appropriate to enforce the human rights and fundamental freedoms guaranteed by the constitution.

(f) Costs.

5. The following grounds were urged in support of the application:-

(1) The period of detention from the 26th July, 1976, to date and the conditions under which the applicant was kept amount to cruel and unusual treatment and further that it amounts to torture of the applicant.

In the High Court.

No. 8.

Judge's Reasons for Decision.

(Continued)

(2) The applicant was denied equality before the law since Edward Chadee was granted a commutation of his death sentence to life imprisonment.
(3) The applicant was denied equality of treatment.
(4) The threat of executing the applicant at this time amounts to a denial of his life, liberty and security of the person without due process of law.
6. Affidavits in support of the motion were filed by the applicant.
7. The Notice of Motion did not, however, specify, as was required by O. 55, Rule 2, of the Rules of the Supreme Court, 1975, the particular provisions of the present Constitution which had been, were being or were likely to be contravened in relation to the applicant. At the hearing, Counsel for the applicant indicated that he was resting his case upon the contention that there was a breach or likelihood of a breach of sections 4 (a), 4(b), 4(d) and 5(2)(b) of the present Constitution. He accordingly sought and was granted leave by the Court for the Notice of Motion to be amended in terms. However, during the course of the hearing of the application, Counsel for the applicant resiled from his original position. He did so in two ways. Firstly, he indicated that he was no longer relying upon his contention that there was a breach or apprehended breach of the provisions of section 4(b) in this case. Secondly, in relation to the prayer for an order that the sentence of death on the applicant be commuted to life imprisonment, he wished to substitute for this a declaration that threat of and/or the carrying out of the sentence of death passed on the applicant is unconstitutional, null and void and of no effect and an Order that the Government of Trinidad and Tobago and/or the Registrar of the Supreme Court and/or the Commissioner of Prisons be restrained from executing the applicant. The necessary leave was sought in both cases and was granted by the Court.
8. Counsel for the applicant at the outset made it clear that he could not object to the imposition of the death sentence as such in this case. Its imposition, he said, upon the applicant by the trial judge could not be challenged as being unconstitutional since it was authorised by an existing law, namely the Offences Against the Person Ordinance. The present Constitution, he stated, preserved all existing laws even in cases where their provisions manifestly collided with it. Consequently, its imposition by the trial judge upon the applicant as the punishment for his crime was outside the pale of the protective restraints of section 14. He submitted, however, that in the circumstances of this particular case the carrying out of the death sentence would be unconstitutional for a variety of reasons. As I understood his agreement, he put his case this way, Firstly, he said the applicant had a legal right to be hanged after the

16th July, 1976. He had no legal right to mercy. To be constitutionally valid, however, the Executive had to carry out his execution within a reasonable time and this particular case within a reasonable time after the dismissal by the Privy Council of the applicant's appeal. There was here inordinate delay of some seven to eight months on the part of the Executive in carrying out the sentence. The due process clause in section 4(a) ofthe present Constitution, he contended, recognises and requires that sentence of death should be carried out within a reasonable time and a fortiori a failure so to do within such time would offend the due process clause and so be unconstitutional. The applicant, he urged, would be entitled to claim the benefit of section 4(a) on that ground alone. In support of this submission, Counsel relied upon the case of De Freitas vs. Benny: 1975, 3 W.L.R. 388 a case brought under the Trinidad and Tobago Constitution Order in Council 1962 (hereinafter referred to as the "former Constitution") and R. v. O'gle 1966 11 W.I.R. 439.

10. But in so far as the question of alleged inordinate delay is concerned. Counsel for the applicant did not stop there. He urged also that this factor alone would amount to cruel and unusual treatment or punishment and so would also be a contravention of section 5 - subsection 2(b) of the present Constitution. This is so, he claimed, because the applicant would have suffered a double punishment over and above that imposed by law. For this proposition Counsel relied upon thecase of Hartung v. The People 22 N.Y. 95 - referred to in Cooley's Constitutional Limitation - 1927 Edition - Vol. 1 - p. 548.

However, Counsel for the applicant did not rest his argument on the basis of inordinate delay alone as his ground for alleging a contravention of the provisions of section 4 (a) and/or section 5 (2) (b) of the present Constitution. Indeed, he urged that in the instant case a combination of agravating factors such as the long wait, the uncertainity, the mental anguish, the procrastination on the part of the Executive, the threat of death, including the tauntings of a Prison Officer, the physical conditions and other attendant circumstances of the applicant's incarceration and such like things together contributed to a contravention either of the due process clause of section 4 (a) or of the cruel and unusual treatment clause of section 5 (2) (b) or both. The reason for this said counsel for the applicant is that the latter would have suffered double punishment or in other words a punishment over and above that sanctioned by law. Here, Counsel relied again on the said case of Hartung v. The People, hereinbefore referred to in support of his proposition.

11. Next, Counsel for the applicant submitted that by granting a reprieve to Edward Chadee - a co-accused - and none to the applicant, the President acting on behalf of the Executive had contravened the provisions of section 4 (d)

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of the present Constitution. The President, he claimed, is a public authority. The act of the Executive acting through the President in granting a respite to one and not the other was of a discriminatory nature. In the result, in the absence of a stated reason for the difference in treatment and none was supplied in this case-there was a clear breach of the aforesaid section which entitles the individual - in this case the applicant - to equality of treatment by a public authority in the exercise of any function.

12. Counsel for the applicant enjoined the Court to hold that by virtue of section 14 of the present Constitution it had the power to restrain the carrying out of the sentence of death in this case. Trinidad and Tobago, he argued, signed the Declaration of Acceptance of the Obligations of the United Nations on the 18th September, 1962. Article 5 of the Universal Declaration of Human Rights had enjoined that "no one shall be subjected to torture or cruel inhuman or degrading treatment or punishment," Parliament was obligated to enact legislation outlawing cruel and unusual punishment. Parliament having failed so to do, the Court's jurisdiction under section 14 of the present Constitution was wide enough to empower it to act upon this Convention and to declare the acts complained of here to be in violation of the said Convention and a fortiori to be in violation of section 5 - subsection 2 (b) of the present Constitution. For this proposition he relied principally upon the cases of Ahamad v. Inner London Education Authority - The Times - March 22, 1977 - and R. v. Secretary of the State for Home Affairs ex-parte Bhajan Singh 1975, 2 A.E.R. 1081.

13. Finally, Counsel urged that section 16 of the Jury Ordinance, Ch. 4 No. 1 required a unanimous verdict for a conviction of murder. The dismissal of the applicant's appeal by the Privy Council was not unanimous (See Abbott v. R. 1976, 63 Criminal Appeal Reports - p. 242). He said that the fact that its decision was a majority one raises "some uncertainty as to the guilt of the applicant beyond reasonable doubt". Because of this, too, the threat to execute the applicant would be a violation of section 4(a) in that it would amount to a taking of his life without due process of law.

14. Counsel for the respondents joined issue with every contention of Counsel for the applicant. In sum, they said first of all that no person could seek redress under section 14 for a breach of the provisions of section 5 sub-section 2 (b) unless he could point to a law passed since the present Constitution which collides with it and that since no such law has been questioned by the applicant in this case, the latter could not rely upon the said provisions. They said too that the applicant was tried and convicted in accordance with due process of law; that his subsequent

incarceration and treatment were in conformity with the laws of the country; and that far from being subjected to any form of torture or harrassment he was well cared for and looked after. Further, the question as to when a condemned prisoner is to be executed, they submitted, is a matter for the sole decision of the Executive acting through the President. They submitted that in these circumstances the applicant could not rely upon the due process clause in section 4(a) either on the ground of delay alone or a combination of delay and other factors, or indeed on any ground.

15. Counsel for the respondents went further to urge that in relation to the exercise of his powers of mercy the President's discretion is absolute. Further, in relation to the contention that the Court can, under and by virtue of the provisions of section 14, act upon article 5 of the Universal Declaration of Human Rights and so declare the acts complained of including the sentence of death to be in breach of the particular provisions of the Constitution, they submitted that apart from the fact that section 14 does not give the Court any such jurisdiction, this would be in violation of the municipal laws of the country themselves preserved and continued in force by the very Constitution.

16. The Constitution of the Republic of Trinidad and Tobago Act No. 4 of 1976 (hereinafter called "the Act") was passed in the Senate and in the House of Representatives on the 24th and 26th days of March, 1976 respectively. It was assented to by the then Governor-General on the 29th March of the said year. The Main Title of the Act was in these terms -

> "An Act to establish the Republic of Trinidad and Tobago and to enact the Constitution thereof in lieu of the former Constitution".

The present Constitution formed the Schedule to the Act. The relevant provisions of the Act are as follows:-

> "2. In this Act -
>
> 'appointed day' means the day fixed for the coming into operation of the Constitution by Proclamation of the Governor General under section 4;
>
> 'existing law' means a law that had effect as part of the law of Trinidad and Tobago immediately before the 'appointed day';
>
> 'the former Constitution' has the same meaning as in section 3 of the Constitution:
>
> 'the Order-in-Council 1962' means the Trinidad and Tobago (Constitution) Order-in-Council 1962.
>
> 3. On the appointed day all the provisions of the former Constitution are replaced and the Order-in-Council 1962 is revoked, and thereupon the Constitution shall have effect as the supreme law of the State in place of the former Constitution.
>
> 4. The Governor General shall by Proclamation published in the Gazette fix a day after the dissolution of the last

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last Parliament under the former Constitution for the coming into operation of the Constitution.

5.(1) Subject to the provisions of this section the operation of the existing law on and after the appointed day shall not be affected by the revocation of the Order-in-Council of 1962 but the existing laws shall be construed with such modifactions, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Act.

(2) . . . . . .

(3) . . . . . .

(4) . . . . . .

(5) Without prejudice to the generality of subsection (1) to (4) and subject to any Order made under subsection (2), in any existing law which continues in force after the appointed day .....unless the context otherwise requires:-

(a) any reference to Her Majesty the Queen whether or not that expression is used or to the Crown in respect of Trinidad and Tobago shall be read and construed as if it were a reference to the State:

(b) any reference to the Governor General shall be read and construed as if it were a reference to the President.

6(1) Where under any existing law any prerogative or privilege is vested in Her Majesty the Queen or the Crown in respect of Trinidad and Tobago that prerogative or privilege shall, on the appointed day, vest in the State and subject to the Constitution and any other law, the President shall have power to do all things necessary for the exercise thereof.

(2) Where under any existing law any rights, powers, privileges duties or functions are vested in the Governor General, those rights, powers, privileges, duties and functions shall on the appointed day, vest in and be exercisable by the President."

17. By a Proclamation dated the 26th July, 1976 the then Governor General fixed the 1st day of August, 1976 for the coming into operation of the Constitution (See Government Notice No. 116 - No. 6 of 1976).

18. The relevant provisions of the present Constitution are here stated:-

"3. In this Constitution:-

'Parliament' means the Parliament of Trinidad and Tobago;

'the former Constitution' means the Trinidad and Tobago Constitution set out in the Second Schedule to the Trinidad and Tobago (Constitution) Order-in-Council 1962.

CHAPTER 1

THE RECOGNITION AND PROTECTION OF FUNDAMENTAL HUMAN RIGHTS AND FREEDOMS

PART 1

RIGHTS ENSHRINED

4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist without discrimination by reason of race origin colour religion or sex the following fundamental human rights and freedoms namely:-

(a) the right of the individual to life, liberty security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law:

(b) . . . . . .

(c) . . . . . .

(d) the right of the individual to equality of treatment from any public authority in the exercise of any functions.

5.(1) Except as otherwise expressly provided in this Chapter and in section 54 no law may abrogate, abridge or infringe or authorise the abrogation, abridgement or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1) but subject to this Chapter and to section 54, Parliament may not -

(a) . . . . . .

(b) impose or authorise the imposition of cruel and unusual treatment or punishment;

(c) . . . . . .

PART 2.

Exceptions for Existing Laws

6.(1) Nothing in sections 4 and 5 shall invalidate -

(a) and existing law;

(b) . . . . . .

(c) . . . . . .

(2) . . . . . .

(3) In this section -

'existing law' means a law that had effect as part of the law of Trinidad and Tobago immediately before the commencement of this Constitution and includes . . . .

PART 5

GENERAL.

14.(1) For the removal of doubt, it is hereby declared that if any person alleges that any of the provisions of this Chapter has been is being, or is likely to be contravened in relation to him then without prejudice to any other action with respect to the same matter which is lawfully available, that

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person may apply to the High Court for redress by way of originating motion.

(2) The High Court shall have original jurisdiction:-

(a) to hear and determine any application made by any person in pursuance of subsection (1); and

(b) . . . . . .

and may, subject to sub section 3 make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The State Liability and Proceedings Act 1966 shall have effect for the purpose of any proceedings under this section.

(4) . . . . . .

(5) . . . . . .

(6) . . . . . .

CHAPTER 4

PARLIAMENT

PART 1

COMPOSITION OF PARLIAMENT

39. There shall be a Parliament of Trinidad and Tobago which shall consist of the President, the Senate and the House of Representatives.

CHAPTER 5

EXECUTIVE POWERS

87(1) The President may grant to any person a pardon, either free or subject to lawful conditions respecting any offences that he may have committed. The power of the President under this subsection may be exercised by him either before or after the person is charged with any offence and before he is convicted thereof.

(2) The President may -

(a) grant to any person convicted of any offence against the law of Trinidad and Tobago a pardon either free or subject to lawful conditions;

(b) grant to any person a respite, either indefinite or for a specified period from the execution of any punishment imposed on that person for such an offence;

(c) substitute a less severe form of punishment for that imposed by any sentence for such an offence;

(d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to the State on account of such an offence.

88. There shall be an Advisory Committee on the Power or Pardon which shall consist of -

(a) the Minister referred to in section 87(3) who shall be Chairman;
(b) The Attorney General;
(c) The Director of Public Prosecutions;
(d) not more than four other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition.

89.(1) Where an offender has been sentenced to death by any Court for an offence against the Law of Trinidad and Tobago, the Minister shall cause a written report of the case from the trial judge together with such other information derived from the record of the case or elsewhere as the Minister may require, to be taken into consideration at a meeting of the Advisory Committee.

(2) The Minister may consult with the Advisory Committee before tendering any advice to the President under section 87 (3) in any case not falling within sub-section 1.

(3) The Minister shall not be obliged in any case to act in accordance with the advice of the Advisory committee.

With respect to the provisions of the Act and the present Constitution hereinbefore set out, I pause briefly to point out what appears to me to be certain important features about them that need to be noticed. They are as follows:-

1. As from 1st August, 1976, the then Mercy Committee ceased to function - S. 3 of the Act.
2. As from the 1st August, 1976, also the prerogative of mercy became vested in the State and the President was, on and from that date, empowered to do all things necessary for its exercise - section 6 of the Act.
3. The specific prohibition against the imposition of cruel and unusual punishment was unlike the former Constitution placed in a separate and distinct subsection and was in clear and unmistakeable language directed to Parliament - section 5(2)(b) of the present Constitution.
4. Unlike the former Constitution, the Court's jurisdiction to make orders, etc., is now made subject to the restraints imposed in the State Liability and Proceedings Act 1966 - section 14 (2) and (3) of the present constitution.

19. I now pass on to refer to the relevant provisions of an existing law that call for scrutiny in this case. I refer in particular to section 59 of the Ordinance. That section provides as follows:-

"59. Every warrant for the execution of any prisoner under sentence of death shall be

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under the Public Seal of Trinidad and Tobago and the hand of the President, and shall be directed to the Marshal and shall be carried into execution by such Marshal or his assistant at such time and place as shall be mentioned in such warrant; and such warrant shall be in Form A in the Third Schedule hereto and they shall issue in every such case a warrant for the delivery of such prisoner by the Keeper of the Royal Gaol to the said Marshal for the purpose of such execution, and such last warrant shall be under the Public Seal of Trinidad and Tobago and the hand of the President and shall be in Form A in the Third Schedule."

20. The form of warrant referred to in the aforesaid section is as follows:-

"TRINIDAD AND TOBAGO

To the Marshal.

Greeting,

Whereas (A.B.). late of ..... has been indicted for felony and murder by him done and committed and the said (A.B.) having been thereupon arraigned before the Supreme Court of Trinidad and Tobago as its Session held on the .....day of .....in the year of Our Lord one thousand nine hundred and ..... and having upon such arraignment pleaded Not Guilty (or Guilty - as the case may be) the said (A.B.) has before the said Court in its aforesaid Sessions been tried and in due form of law convicted thereof; And whereas judgment has been givenby the said Court, that the said (A.B.) be hanged by the neck until he be dead, the execution of which judgment still remains to be done, I..... President of Trinidad and Tobago, do by these presents require and strictly command you that upon .....the ..... day of .....in the year of our Lord one thousand nine hundred and .....between the hours of six in the forenoon and twelve at noon of the same day him the said (A.B.) at the Royal Goal to you to be delivered as by another writ to the Keeper of the said Royal Goal is commanded into your custody. You then and there receive, and him in your custody so being cause execution to be done upon the said (A.B.) in your custody so being in all things according to the same judgment: and this you are by no means to omit at your peril."

21. This is the first occasion that the fundamental human rights and freedoms provisions of the present Constitution have been prayed in aid. Let me say from the outset that, in my view, the provisions of section 5 subsection 1 notwithstanding, a breach of any of the rights enshrined in section 4 by the Executive, otherwise than under the umbrella of existing law, would entitle an aggrieved person to seek

redress under section 14 of the present Constitution. If the rights and freedoms are enshrined in the supreme law of the Republic of Trinidad and Tobago, and a person is entitled thereunder to protection from invasion of any of these rights, then it seems to me that a breach or threatened breach of any of them by the Executive, the Judiciary or Parliament must, but subject to existing law, of necessity entitle that person to redress under section 14 of the present Constitution. It seems to me that what section 5 - subsection (1) seeks to do is to reinforce and emphasize the importance and sanctity of the rights and freedoms enshrined in section 4. The section does not, in my view, put a limitation upon the ambit of these enshrined rights and freedoms.

22. Since this is the first case under which the provisions of sections 4 and 5 of the present Constitution are being reviewed, no direct authority is available on the point. It seems to me, however, that if guidance be needed, such can be found from the Privy Council case of Hinds and Jackson v. R. 1976; 1 A.E.R 353 (a case from Jamaica) where Lord Diplock at page 360 ibid stated:-

> "The more recent Constitution on the West minister model unlike their earlier prototypes, including a chapter dealing with fundamental rights and freedoms. The provisions of this chapter form part of the substantive law of the State and until amended by whatever special procedure is laid down in the Constitution for this purpose impose a fetter on the exercise by the legislative, the executive and the judiciary of the plentitude of their respective powers."

See also Rees J.A. in Thornhill v. A.G. and Others; Civil Appeal No. 39/74 at page 5.

The substance of the applicant's complaints, is, among others, that there is an attempt on the part of the Executive to deprive him of his life otherwise than by due process of law. He, therefore, in my judgment has a locus standi under section 14 of the present Constitution.

23. With these observations and the foregoing provisions and ruling in mind, I now turn to the case for the applicant. With regard to the submission of Counsel for the Applicant that the right in section 5(2)(b) of the Constitution has been infringed in relation to the applicant, it seems clear beyond peradventure that the enjoinder against the imposition of cruel and unusual treatment or punishment is directed to Parliament. Parliament can, in cases of this kind, only actthrough legislative instructions. These legislative instructions which are open to scrutiny and challenge as to their constitutionality are obviously those which were passed since the present Constitution. Since

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Counsel for the applicant did not and could not point to any such legislative instrument, it seems to me impossible for Counsel for the applicant to surmount the contention of Counsel for the respondents that the applicant could not therefore rely upon the provisions of section 5(2)(b) of the present Constitution in any event. In my judgment the section is too plain for words. It needs no authority to support it. But if authority need be called in aid the case of De Freitas v. Benny 1975, 3 W.L.R. 388 is of assistance. In that case the Board was onstruing the provision of section 2, among others, of Chapter 1 of the former Constitution a provision in terms similar to section 5 (2)(b) of the present Constitution. In delivering the judgment of the Board Lord Diplock stated at page 391 ibid:-

> "Section 2 is not dealing with enacted or unwritten laws that were in force in Trinidad and Tobago before that date. What it does is to ensure that subject to three exceptions no future enactment of the Parliament established by Chapter IV of the Constitution shall in any way derogate from the rights and freedoms declared in section 1"

24. In my view, the provisions of section 5(2)(b) are even plainer than the corresponding provisions of the former Constitution. They point clearly and unmistakably to the permissible area for constitutional dispute. It is, in my judgment, aimed and directed at future laws and nothing else.

25. Since the constitutional validity of a legislative instrument parsed after the present Constitution has not been challenged in this case, I hold that the applicant cannot rely here upon the provisions of section 5(2)(b) of the said present Constitution. I may add in passing that Counsel for the applicant had relied upon the case of Hartung -v- The People (supra) in support of his position. When, however, the facts of this case as reported briefly in Cooley's are looked at, it will be seen that what was struck down there as being unconstitutional and in violation of the American Constitution was a piece of amended legislation that provided for confinement at hard labour until the punishment of death should be inflicted. It further provided that such punishment should not be inflicted under one year nor until the Governor should issue his warrant. The Court, it seems, was at pains to point out that the legislation placed the convict at the mercy of the Governor at the expiration of one year from the time of the conviction and of all his successors during the lifetime of the convict. In effect the law was providing for one year's imprisonment in addition to the punishment of death. That, respectfully, is not the case here. Accordingly, Hartung's case is, in my view, of no relevance.

26. I turn now to the contention of Counsel for the applicant that there has here been a breach of the due process clause of section 4(a) in relation to the applicant. It should be noted from the outset that the present Constitution recognises that a person can be deprived of his life. What it does enjoin, however, is that life can only be taken in accordance with due process of law. The expression due process of law invited and provoked scrutiny and comment in the case of Lassalle v. A.G. 1971; 18 W.I.R. 379 - a case in which section 1(a) of the former Constitution in identical terms to section 4(a) of the present Constitution was being construed. In that case Phillips J.A. stated ibid at page 388:-

> "The expression 'due process of law' is equivalent to the 'law of the land'. For the purpose of its application to a tribunal exercising jurisdiction to try an individual for a criminal offence the 'law of the land' means basically the common law system of trial by jury of his 'peers'."

27. After referring to Magna Carta and to the views of Professor Holsworth in his History of English Law - Volume 1 - page 63, the learned judge went on to state thus at page 391 ibid:-

> "In my opinion these words of Professor Holsworth serve to elucidate the meaning and content of the expression 'due process of law' as it is used in s. 1(a) of the former Constitution. Some of them can bear repetition. The concept of 'due process of law' is the antithesis of arbitrary infringement of the individual's right to personal liberty; it asserts his 'right to a fair trial; to a pure and unbought measure of justice'. While it is not desirable and indeed not possible to formulate and exhaustive definition of the expression, it seems to me that as applied to the criminal law . . . . it connotes inter alia the following fundamental principles:-
>
> (i) reasonableness and certainty in the definition of criminal offences;
>
> (ii) trial by an independent and impartial tribunal;
>
> (iii) observance of the rules of natural justice."

28. In my opinion, "due process of law" should normally be completed when the Courts of law have finished their respective tasks. In my view, however, due process of law can be breached although the Courts have finished their

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respective tasks. One can envisage for example the case (though highly unlikely) of a threatened form of the death penalty otherwise than by what is now ordained by law. If this be the case this in my view would be in breach of the due process clause and the aggrieved party can pray in aid of the provisions of section 4(a) of the present Constitution. But this is by his peers. He ran his full gamut of appeals. His plea for mercy the advice of the designated Minister has signified the State's will. The method of his execution has been signified by the President in his warrant to the Marshal and is in accordance with existing law. I digress here in order to point out that the acts complained about such as procrastination and the like and the physical circumstances of the applicant's incarceration are themselves ordained and/or permissible under the existing laws. See for example S. 59 of the Ordinance and the Prison Rules, Ch. 11, No. 7 - Part V - Special Rules for Particular Classes of Prisoners - Prisoners under sentence of death - Rules 294 - 296. Indeed, so far as the Prison Authorities are concerned the evidence disclosed, and I accepted it, that the applicant was well cared for. Mental anguish and anxiety and the threat of death are not matters peculiar to a person such as the applicant placed as he now is. Neither the State nor its servants or agents can therefore be responsible for this.

29. I go a stage further to point out that delay of the kind complained about cannot be a ground for redress under the due process clause of section 4(a) since there was no law in the country which prohibited the Executive from executing the applicant at any time after the date of the dismissal of his appeal by the Privy Council (whose decision, incidentally, is binding in law and on this country albeit a majority decision until disapproved or over-ruled by the Board itself). Indeed, the Ordinance has left the date open to the President who renders the constitutional acts on the advice of the designated Minister. See in this connection De Freitas v. Benny ibid at page 392 - 393 (letters H-D). See also Hyatali C.J. in De Freitas v. Benny; Civil Appeal No. 13 of 1974 - pages 7 - 11.

30. It seems hardly necessary for me to deal with the case of R. v. O'gle 1966; 11 W.I.R. 439, but in deference to Counsel for the applicant I do so. However, I do so merely to point out that, in my view, this case has no relevance to the matters in issue in the instant case. That case was concerned with the question whether there was a fair hearing of a trial within a reasonable time as specifically enjoined by Article 10(1) of the Guyana Constitution. There, an attempt was made to have the depositions of an absent witness read in evidence more that three years after the committal of the accused for trial. Held that unless the prosecution had a satisfactory explanation for the delay in bringing on the trial, the depositions of the absent witness could not be read as the fair hearing provisions of the Constitution would have been violated.

No satisfactory explanation for such delay having been offered, the depositions were not allowed to be read in evidence.

31. We are not here concerned with depositions or a trial or the fair hearing clause of our present Constitution. In my view, therefore, the case of O'gle is of no assistance.

32. For the foregoing reasons I hold that the due process provisions of section 4 (a) have not been breached in relation to the applicant. The contention of Counsel for the applicant accordingly fails.

33. In deference to all concerned, however, I think it is only fair and proper that I should, before passing on, record that whatever delay that may have occasioned in the instant case was attended by incontrovertible factors. A train of events occurred shortly after the submission of the applicant's appeal to the Mercy Committee on the 26th July, 1976, among them being the repeal of the former Constitution and as a consequence thereof the quashing of the then membership of the Mercy Committee, the establishment of the Republic, the enactment of a new Constitution with effect from 1st August, 1976, preparations for a General Election, the proroguing of Parliament, the General Elections itself, the appointment of a new body of persons to form the Mercy Committee as required by the new Constitution and the appointment of the designated Minister to advice the President on the exercise of the powers of pardon. All these events ended sometime in the month of December 1976. In the circumstances, it can hardly be seriously contended that the expression of the State's will some three months thereafter constitutes inordinate delay.

34. I pass now to the contention of Counsel for the applicant that there was a breach of section 4(d) of the present Constitution because the executive arm of the State acting through the President had discriminated between the fate of the co-acoused, Chadee, and the applicant's. In my judgment it is well to bear in mind the position and status of the President under the present Constitution on the one hand and his role in the exercise of the powers of pardon on the other. He is not a monarch by any means. But, in my opinion, he is not a public authority either. See in this connection Halsbury's Laws - 3rd Edition - Volume 30 - para 1317 - P. 68; Burroughs - Words and Phrases - 2nd Edition - Volume 4 - P. 217 - 218. See also Littlewood v. Wimpey 1953; 1 A.E.R. 583 at 586 and 587 as to the characteristics of a public authority. In my opinion the President stands in relation to Trinidad and Tobago like the Queen of England stands in relation to that country. He is the axis or symbol around whom the entire fabric of body-politic of the Republic is centered - See in this connection sections 22 and 74 of the present Constitution. But I go a stage further. The present Constitution itself has bestowed upon the President thepower to commute any

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(Continued)

sentence imposed upon any person by law. In so doing, he acts upon the advice of the designated Minister. It matters not that he does so in the case of a co-accused and not another where both have been convicted for the same offence. It matters not too that today the prerogative vests in the State and that the President does what is necessary for its exercise. The fact remains that the exercise of the prerogative of mercy is a purely discretionary executive act; that that being so no one has any legal right to the disclosure of the reason or reasons for its exercise or non-exercise or indeed to challenge its exercise; and that when once the State has spoken on the matter through the President acting on the advice of the designated Minister the Court cannot interfere - See in this connection De Freitas v. Benny ibid at pages 394 - 395.

35. I may add that this absolute discretionary power is nothing new. It was provided for in the former Constitution which allowed for the then Governor General to do so in the former Majesty's name and on Her behalf - See De Freitas' Case (ibid) at page 394. For that matter it existed even before the former Constitution - See in this connection section 74 and 75 of the Ordinance. See also Hyatali C.J. in Benny v. De Freitas Civil Appeal No. 13/74 at page 18.

36. For the foregoing reasons the contention of Counsel for the applicant also fails.

37. I turn my attention now to the next contention of Counsel for the applicant with respect to Article 5 of the Universal Declaration of Human Rights, its application to the instant case and the powers of the Court thereunder. The Common Law of this country is that a convention or treaty and such like things do not form part of the law of this country until and unless it is reduced into legislation passed by Parliament. This principle hardly bears reptition. But if authority need be called, it would suffice if I refer to section 12 of the Judicature Act 1962 and to the cases of A.G. for Canada v. A.G. for Ontario; 1937 A.C. 326 where Lord Atkin in the judgment of the Privy Council stated (ibid) at page 347:-

> "It will be essential to keep in mind the distinction between (1) the formation and (2) the performance of the obligations constituted by a treaty using that word as comprising any agreement between two or more sovereign states. Within the British Empire there is a well established rule that the making of a treaty is an executive act which the performance of its obligations if they entail alteration of any existing domestic law requires legislative action."

See also Mc Nair - Law of Treaties - 1961 - P. 81 - Wade and Phillips' Constitutional Law - 7th Edition - P. 274 at 329.

38. It is true that today there is no British Empire. But the principle enuncitated by Lord Atkin in the A.G. for Canada case (supra) is the same today. It is the law of Trinidad and Tobago.

39. It is true too as Counsel for the applicant has stated that English Judges from time to time expressed the view that the Courts can and should look at a Convention to see whether a bit of legislation which is under scrutiny conforms with it and if not to see whether the legislation can be made to conform with it as in Ahamad's Case (supra). But that view cannot apply to an existing law in this country. At any rate, the judges of England have recognised that the age old principle remains, and that is once a Convention or treaty or any like document requires the alteration of existing domestic legislation or the passing of domestic legislation it has no force of law in England until and unless its Parliament acts accordingly. Indeed Lord Denning in R. v. Secretary of State for Home Affairs ex-parte Bhajan Singh; 1975, 2 A.E.R. 1081, was at pains to point this out for at page 1083 he stated (ibid):-

> "I would however like to correct one sentence in my judgment in Birdi's case. I said, 'If an Act of Parliament did not conform to the convention I might be inclined to hold it invalid.' That was a tentative statement but it went too far. There are many cases in which it has been said, as plainly as can be, that a treaty does not become part of our English law except and insofar as it is made so by Parliament. If an Act of Parliament contained any provisions contrary to the convention, the Act of Parliament must prevail."

40. The law to my mind is clear. In relation to any alleged wrong done to a subject under the municipal law, the Courts cannot look at any convention the contents of which have not been reproduced into the municipal law of the country are to the contrary or have already spoken on the matter. In this case section 4 of the Offences Against the Person Ordinance, Ch. 4, No. 9 enjoins that any person convicted of murder must suffer death as a felon.

41. I am also of the opinion that while the Court is empowered by Section 14 to make a declaration in any given case it is now expressly debarred by the provisions of sub-section 3 of that section granting coervice relief against the State or its officers the effect of which would be to injunct the State of any officer acting for and on behalf of the State. See in this connection sections 3 and 22 of the State Liability and Proceedings Act 1966, Merrick v. Heathcoat Armory and the Minister of Agriculture 1955, 3 W.L.R. 56. In

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Judge's Reasons for Decision.

(Continued)

my opinion the case of Jaundoo v. A.G. 1971, 16 W.L.R. 141, does not assist counsel for the applicant on this for two reasons:-

1. There was no or no similar Crown Proceedings legislation in Guyana at the time when the case was being canvassed - See in this connection the dictum of Luckoo J.A. in Juandoo v. A.G. 12 W.I.R. 221 at 224 (Letters G-H). See also the dictum of Lord Diplock in the same case in 16 W.I.R. 141 at page 150 (Letter B - D).

2. The Guyana Constitution did not contain provisions in terms of section 14 - subsection 3 of the present Constitution. It could not because there was no Crown Proceedings legislation then in Guyana.

42. I agree with Counsel for the applicant that the provisions of section 13 empower the Court to strike down "Acts" if in the opinion of the Court they are not shown to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual. But the section makes it plain that the expression "Act" refers only to legislation and by this I mean legislation passed since the 1st August, 1976. Quite apart from its provisions, the section is preceded by the heading - "Part 4 - Exceptions for certain legislation." It is abundantly clear, therefore, that the section is not concerned with administrative acts such as those in question here or for that matter any administrative or executive act.

43. In mounting his case upon sections 13 and 14 under this head of the argument Counsel for the applicant suggested and invited the Court to take courses of action which in my view are not only unauthorised by the law of the land but, when carefully examined, it will be seen that a resort to them would have to obvious and, in my view, unfortunate result of subverting the clear and unvarnished provisions of all the existing laws and the present Constitution itself. For the reasons which I have already expressed I am in duty bound to act in obedience to the existing laws and the present Constitution itself. I may add that the Court is not and must not be concerned with pious platitudes. Nor is it to be concerned with appeals of a moral or religious kind or for that matter the opinions of men or women of the cloth. The court's function is to enforce the law - however harsh however archaic - however unfortunate, it, may appear to be. The court cannot substitute its own feelings for the will of the elected legislature and this is more particularly so where its will is reflected in its perpetuation of existing laws, themselves preserved and maintained by the present Constitution itself. The Court was debarred from so doing ever since the enactment of the former Constitution. If it dares to do so in this case, in my opinion the Court would

dares to do so in this case, in my opinion the Court would have committed a gross and unpardonable trespass upon the constitutional province of the Executive. Acts of this kind lead only to obvious anarchy and chaos. Those who consider that the death penalty has either out - lived its usefulness or has not served its purpose must understand and appreciate that its appeal must be of a political kind. In short, at this stage matters of this kind are for Parliament and not the Courts. See in this connection Lord Morris of Booth-Y-Gest in Runyowa v. R. 1966, 1 A.E.R. 633 at page 643 (ibid). See also the dictum of Hyatali C.J. in De Freitas v. Benny, Civil Appeal No. 13 of 1974 at pages 16-17.

44. In the resultthe motion is dismissed. There will be no order as to costs.

Dated this 5th day of May, 1977.

Clinton Bernard,
Judge.

No. 9.

Formal Order of Bernard J.

TRINIDAD AND TOBAGO:

IN THE HIGH COURT OF JUSTICE

No. 739 of 1977.

Between

STANLEY ABBOTT

And

In the Matter of the Constitution of Trinidad and Tobago (Act No. 4 of 1976)

And

In the Matter of the Application of Stanley Abbott a person alleging that the provisions of the Constitution protecting his human rights and fundamental freedom have been are being contravened in relation to him for redress in accordance with section 14 of the said Constitution.

In the High Court.

No. 9.

Formal Order of Bernard J.

5th May, 1977.

(Continued).

And

The Order of the Judicial Committee of the Privy Council dated 20th July, 1976, whereby the appeal of the Applicant was dismissed and the conviction of murder and sentence of death affirmed

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Dated the 5th day of May, 1977.
Entered the 6th day of March, 1978.

Before the Honourable Mr. Justice C. Bernard.

This matter having been heard on the 15th, 19th, 20th, 21st, 22nd and 26th days of April, 1977

UPON reading the affidavits filed on behalf of the applicant and onbehalf of the defendants herein upon hearing the evidence of Randolph Charles and of George Benny and upon hearing Counsel for the applicant and counsel for the respondents

IT IS THIS DAY ORDERED that this motion do stand dismissed and the same is hereby dismissed.

No order as to costs.

Registrar

Carlton O. Best.

In the Court of Appeal.

No. 10.

Notice of Appeal.

1st June, 1977.

No. 10.

Notice of Appeal.

TRINIDAD AND TOBAGO: IN THE COURT OF APPEAL

H.C.A. No. 739 of 1977.
Civil Appeal No. 33 of 1977.

BETWEEN

STANLEY ABBOTT Appellant:

AND

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO
THE REGISTRAR OF THE

SUPREME COURT, MR. GEORGE BENNY
THE COMMISSIONER OF PRISONS
MR. RANDOLPH CHARLES Respondents

In the Court of Appeal.

No.10.

Notice of Appeal.

1st June, 1977.

(Continued).

TAKE NOTICE that the Applicant/Appellant being dissatisfied with the decision more particularly stated in paragraph 2 hereof of the High Court contained in the judgment of the Honourable Justice Clinton Bernard dated the 5th day of May, 1977 doth hereby appeal to the Court of Appeal upon the grounds set out in paragraph 3 and will at the hearing of the appeal seek the relief set out in paragraph 4.

And the Appellant further states that the names and addresses including his own of the persons directly affected by the Appeal are those set out in paragraph 5.

2. The Applicant's Motion is dismissed.

3. GROUNDS OF APPEAL:

(a) The learned judge erred in holding that the State was not guilty of procrastination in carrying out the death sentence on the Appellant.

(b) The learned judge erred in holding that the Appellant dis not suffer cruel and unusual treatment.

(c) The Learned judge erred in holding that the Section 5 of the Constitution only applies to legislative violations and not executive violations.

(d) The learned judge erred in holding that Section 14 of the Constitution debars the Court from making coercive orders against state officials if they are violating the Constitution.

(e) The learned judge erred in holding that the success of the Appellant's Motion meant subverting the common law.

4. The relief sought is that the judgment of the High Court dismissing the Applicant's Motion be set aside and judgment be entered for the Applicant's in terms of the prayer in the Motion.

5. Persons directly affected by this Appeal:-

NAMES	ADDRESSES
(a) Stanley Abbott	State Prison, Frederick Street, Port of Spain.
(b) The Hon. Attorney General.	Red House, Port of Spain.
(c) The Commissioner of Prisons	State Prison, Frederick Street, Port of Spain.
(d) The Registrar of the Supreme Court.	Red House, Port of Spain.

Dated this 1st day of June, 1977.

/s/ G.P. Morean & Co.
Solicitors for the Appellant:

To: The Hon. Attorney General,
The Commissioner of Prisons
The Registrar of the Supreme Court.

In the Court of Appeal.

No. 11.

Supplementary Notice of Appeal.

13th April, 1977.

No. 11.

Supplementary Notice of Appeal.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL.

H.C.A. No. 739 of 1977.
Civil Appeal No. 33 of 1977.

Between

STANLEY ABBOTT Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
THE REGISTRAR OF THE SUPREME COURT, MR. GEORGE BENNY
THE COMMISSIONER OF PRISONS
MR. RANDOLPH CHARLES Respondents

SUPPLEMENTARY GROUNDS OF APPEAL:

a) The learned judge erred in law in holding that Section 5(2) b of the Constitution was aimed at future law and nothing else and therefore since the constitutional validity of legislative instruments passed after the constitution was not challenged the appellant could not rely on the said Section.

b) The learned judge erred in law in holding that the appellant could not complain of a violation of "due process of law" since he was tried and convicted by his peers and the warrant given to the Marshall in accordance with the existing law.

c) The learned judge erred in law in holding that procrastination and the like and the physical circumstances of the applicant's incarceration are themselves ordained and/or are permissible under existing law.

d) The learned judge erred in law in holding that the State or its servants cannot be responsible for mental anguish or anxiety.

e) The learned judge erred in law in holding that delay of the kind complained about could not be a ground for redress under the due process clause of Section 4(a) since there was no law in the Country which prohibited the Executive from executing the applicant at any time after the date of the dismissal of his appeal by the Privy Council.

f) The learned judge erred in law in holding that it cannot seriously be contended that the expression of the State's will against the background of facts in this case constituted inordinate delay.

g) The learned judge erred in law in holding that once the State has spoken through the President acting on the advice of the designated Minister, the Courts cannot interfere.

h) The learned judge erred in law in holding that the Courts cannot look at any Internatural Convention the contents of which have not been reproduced into the municipal law of the country by Parliament and more particularly so where the existing law of the country is to the contrary or have already spoken on the matter.

i) The learned judge erred in law in holding that by virtue of Section 14(3) of the Constitution the Court is debarred from granting coercive relief against the State or any officer acting for and on behalf of the State and the appellant will content that if such a proposition is true it makes a mockery of the Constitutional Rights.

j) The learned judge erred in law in holding that Section 13 only empowers the Court to strike down Acts of Parliament.

k) The learned judge erred in law in holding that in giving redress under the Constitution he would be subverting the Constitution and all existing laws.

l) The learned judge erred in law and misdirected himself as to the gravity of the matter by finding that the case for the appellant was one of pious platitudes.

m) The learned judge erred in law in holding that the Court is not concerned with appeals of a moral or religious kind or for that matter the opinions of men or women of the cloth.

n) The learned judge erred in law in failing to appreciate the function and duty of the Court in enforcing the Constitution.

R. L. Maharaj.
Of Counsel.

Dated the 13th day of April, 1977.

To: The Registrar of The Court of Appeal.

And To:
The State Solicitors,
7 St. Vincent Street,
Port of Spain,
Solicitors for the respondents.

In the Court of Appeal.

No. 12.

Order of Court of Appeal.

5th May, 1978.

No. 12.

Order of Court of Appeal.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

H.C.A. No. 739 of 1977.
Civil Appeal No. 33 of 1977.

Between

STANLEY ABBOTT — Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

THE REGISTRAR OF THE SUPREME COURT, MR. GEORGE BENNY

THE COMMISSIONER OF PRISONS MR RANDOLPH CHARLES — Respondents.

Dated the 5th day of May, 1978.
Entered the 15th day of August, 1978.

Before the Honourable Mr. Sir Isaac Hyatali, Chief Justice
Mr. Justice Corbin
Mr. Justice Kelsick.

UPON READING the Notice of Appeal filed herein on behalf of the above named Appellant dated the 1st day of June, 1977 and the judgment herein mentioned

UPON READING the record filed herein

UPON HEARING Counsel for the Appellant and Counsel for the Respondents

AND MATURE DELIBERATION THEREUPON HAD

IT IS ORDERED

(i) that this appeal be dismissed
(ii) that the judgment of the Honourable Mr. Justice Clinton Bernard dated the 5th day of May, 1977, be affirmed
(iii) that there be no order as to costs.

/s/ C. O. Best.
Registrar.

No. 13.

Judgment of Sir. Isaac Hyatali C.J.

In the Court of Appeal

No. 13.

Judgment of Sir Isaac Hyatali C.J.

5th May, 1978.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 33 of 1977.

Between

STANLEY ABBOTT Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO, THE REGISTRAR & MARSHAL OF THE SUPREME COURT, THE COMMISSIONER OF PRISONS Respondents

Coram: Sir Isaac E. Hyatali, C.J.
M.A. Corbin, J.A.
C.A. Kelsick, J.A.

May 5, 1978.

R. L. Maharaj - for the appellant.
C. Brooks and Mrs. J. Permanand - for the respondents.

JUDGMENT

Delivered by Sir Isaac Hyatali, C.J.:

This is an appeal by Stanley Abbott (the applicant), a prisoner under sentence of death, against the dismissal of his application for redress against the respondents herein, namely, the Attorney General, the Registrar and Marshal of the Supreme Court and the Commissioner of Prisons. By his application, which was made by way of originating motion to the High Court under s. 14 of the Constitution of the Republic of Trinidad and Tobago (the New Constitution) the applicant sought the following redress: an order adjudging the sentence of death passed upon him for murder, unconstitutional, null and void, or alternatively, an order commuting the said sentence to one of life imprisonment on the ground that certain of his fundamental rights and freedoms, (which are particularised hereafter) had been or were being infringed by the State.

In the Court of Appeal.

No. 13.

Judgment of Sir Isaac Hyatali C.J.

5th May, 1978.

(Continued).

Section 14 of the Constitution provides as follows:

"(1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress by way of originating motion.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1),

. . . . . .

and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The State Liability and Proceedings Act, 1966 shall have effect for the purpose of any proceedings under this section."

. . . . . .

The application itself was preceded by a series of notorious events, the most significant of which occurred on 16 July 1973, when he and one Edward Chadee, his co-accused, were convicted of the murder of Gale Anne Benson and sentenced to suffer the mandatory penalty of death prescribed by s.4(1) of the Offences Against the Person Ordinance Ch. 4 No.9. On 9 July 1974, the applicant's appeal against his conviction was dismissed by this Court which held, inter alia, that duress on which he had relied at his trial, was no answer to a charge of murder. The facts recorded in the judgment in that case showed, that it was a gruesome murder of a naive and trusting young woman, and that it was committed on 2 January 1972 at 43 Christiana Gardens, Arima. The gory details of the murder were given in evidence most by applicant himself, but they need not be rehearsed here, as they are not relevant for present purposes.

On 12 March 1975, the House of Lords in D.P.P. for Northern Ireland v Lynch (1975) 1 All E.R. 913, held by a majority of three to two, that a plea of duress as a defence to

a charge of murder, was available to a person accused thereof as a principal in the second degree, but the position of a person accused as a principal in the first degree, was left open by their Lordships. On 12 June 1975, the applicant (whose role in the murder of Benson was that of a principal in the first degree), was granted special leave to appeal against his conviction by the Privy Council. On 20 July 1976, the Board by a majority of three to two, dismissed his appeal, holding that the defence of duress was not in law available to a person charged with murder as a principal in the first degree. (Abbott v The Queen (1976) 3 All E.R. 140 P.C.).

On 26 July 1976 the applicant submitted a petition for Mercy to the Governor General, for consideration by the Advisory Committee on the Prerogative of Mercy, established under s. 71 of the Constitution of 1962 (the former Constitution). By that date however, important constitutional developments had taken place. The New Constitution had been enacted on 29th March 1976, Parliament had been dissolved on 19 June 1976 and dates for the coming into operation of the New Constitution and the holding of general elections were about to be proclaimed. By a Proclamation made on the said 26 July, 1976, under the authority conferred in that behalf by s.4 of the Constitution of the Republic of Trinidad and Tobago Act 1976 (the Act) the Governor General, after reciting that the last Parliament stood dissolved on 19 June 1976, by virtue of s 50(2) of the former Constitution, fixed 1 August 1976, for the coming into operation of the New Constitution. By virtue of s.3 of the Act, the former Constitution was repealed from that date, and by virtue of s. 25(1) of the New Constitution, the person holding the office of Governor General became the President of the Republic ad interim.

Following that Proclamation, the President acting under the powers vested in him by s. 69 of the New Constitution, appointed 13 September 1976 for the holding of general elections. By s.88 of the New Constitution, provision was made for the appointment of an Advisory Committee on the Power of Pardon (the Advisory Committee) to replace its predecessor which had become defunct on 1 August 1976, but no such Committee was appointed until the expiry of some four and a half months after that date even though the transitional provisions of the Act, permitted one to be lawfully appointed immediately thereafter.

The general elections were held as directed on 13 September 1976, and its results duly declared. Following the appointment thereafter of the Prime Minister and other Ministers of Government, the Advisory Committee was duly constituted on 13 December 1976 by the appointment of the non-official members thereto under s.88(d) of the New Constitution. That Committee, of which the Minister of National Security was Chairman, considered the applicant's petition in the course of discharging its functions under s.89 of the New Constitution and on 23 February 1977, the President, after receiving the advice of the Minister aforesaid, rejected the applicant's petition and

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(Continued).

confirmed the sentence of death passed upon him.

On 12 March 1977, the President issued a warrant under his hand and seal to the Marshal, directing that the applicant be executed on 22 March, 1977, at the place specified therein. He did so, under the authority conferred on him in that bahalf by s.59 of the Criminal Procedure Ordinance Ch.4 No.9 (the Ordinance), an enactment which continued to have effect as part of the law of Trinidad and Tobago after the proclamation of the New Constitution by virtue of s.6 thereof. Accordingly, the applicant's execution was fixed to take place at the expiration of a period of eight months and two days from the dismissal of his appeal by the Privy Council, four days short of eight months after the presentation of his petition for mercy, and three months and nine days after the appointment of the Advisory Committee under the New Constitution.

On 15 March 1977, the origination motion herein was filed. The reliefs claimed thereunder were:

"(a) An order that the sentence of death passed on the applicant is unconstitutional, null and void, since there was procrastination in carrying out the sentence from 20th July 1976 after the Privy Council dismissed the applicant's appeal against conviction for murder of Gale Ann Benson.

(b) An order that the Government of Trinidad and Tobago and/or the Registrar of the Supreme Court and/or Commissioner of Prisons be restrained from executing the said applicant.

(c) Alternatively, an order that the sentence of death on the applicant be commuted to life imprisonment.

(d) Such further or other relief as the justice of the case may require and which the Court may grant pursuant to the provisions of Section 14 of the /New/ Constitution. .. ..

(e) Such further or other relief as the justice of the case may require including such orders, writs and directions as may be necessary or appropriate to enforce the human rights and fundamental freedoms guaranteed by the /New/ Constitution."

The grounds for seeking the reliefs claimed were couched in these terms:-

"(1) The period of detention from July 26 1976 to date and the conditions under which the applicant was kept amount to cruel and unusual treatment and further that it amounts to torture of the applicant.

(2) The applicant was denied equality before the law and the protection of the law, since Edward Chadee was granted a commutation of his death sentence to life imprisonment.

(3) The applicant was denied equality of treatment.

(4) The threat of executing the applicant at this time amounts to a denial of his life, liberty and security without due process of law."

The President was duly advised of the motion, and under the powers conferred on him by the proviso to s.59 of the Ordinance, he respited the execution of the applicant by a warrant issued on 16 March 1977. Thus, the President's further warrant in that behalf now awaits the final outcome of this appeal.

Bernard, J. heard the motion 15, 19, 20, 21 and 26 April 1977 and dismissed it on 5 May 1977. Notice of appeal against the learned judge's decision was filed on 1 June 1977. In an amended notice filed thereafter, fourteen errors of law were alleged against it. But eight months after the original notice of appeal was given, it was discovered that the applicant had made default in filing the record, and moreover, had failed to take steps to apply for an enlargement of the time within which he might be allowed to do so. Accordingly, on 24 February 1978 the Attorney General moved to have the appeal dismissed for want of prosecution. This Court however, granted an application made on his behalf, and extended the time for filing the record to 10 March 1978. On 9 March 1978, this was duly done.

The course which the hearing of the motion took, has a history of its own. In his affidavit in support thereof, the applicant stated as follows:

"1. From July 26, 1976, to the present time I have been left to languish in a close prison cell and the unspeakable anguish I have experienced as a result has been to me a terrible punishment.

2. I suffered continuously from nervous tension created by the uncertainty as to whether I would be executed or allowed to live. The resulting feelings were frightening. In addition I was kept in the death cell, which measures about 10 feet by 6 feet. My bed occupies most of the room and the hangman's trap is about 10 feet away.

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5th May, 1978.

(Continued).

3. The room is dark with little fresh air. I suffer from sleeplessness caused by anxiety and worry and no effort was made by the authorities to prevent or appease the situation.

4. As a result of the procrastination of the authorities and the manner and method of my incarceration and my sufferings as a prisoner in the death cell for a long period I suffer cruel inhuman and unusual treatment and/or punishment. I also felt tortured during the period of my incarceration.

5. A fellow-convict, Edward Chadee, was jointly tried with me for and jointly convicted of the same offence, He was likewise sentenced to die. His sentence of death was commuted to life imprisonment in this month and mine was not."

In his affidavit in reply to the applicant's allegations, the respondent Randolph Charles, the Commissioner of Prisons, recited the political and constitutional developments to which I have already referred and stated as follows:

"(i) It is not true to say that the applicant has experienced unspeakable anguish whilst in prison. He is visited by his relatives and friends, and by a Chaplain of his denomination. He is allowed to communicate with his relatives, friends, and legal advisers of his choice. He is permitted to see his Counsel whenever his Counsel so requests. Further, he is permitted regular exercise and sunlight.

(ii) His cell is comfortable, properly ventilated and is equipped with bed, bed linen, and reading material. There is an electric fan in the corridor, and a radio speaker in each division. The cell is not dark and has adequate natural light during the day time, and it is lit by electric light at night. The Execution Chamber is kept closed at all times, and is not exposed to public view.

(iii) The applicant is provided with proper amenities, including proper food, clothing, and a supply of daily newspapers. Medical attention is available.

(iv) It is not true to state that the applicant is merely left to languish in a prison cell, and that he has experienced unspeakable anguish as a result.

(v) There has been no procrastination on the part of the Authorities, nor has the applicant been subjected to any cruel and unusual treatment and/or punishment, or torture of any kind.

(vi) It is not true to say that the applicant suffers from sleeplessness, and that no effort is made by the authorities to prevent or appease the situation.

(vii) On the 7th day of March, 1977, the President, acting in accordance with the advice of the designated Minister, commuted the sentence of death imposed on Edward Chadee to one of life imprisonment. The petition of the applicant herein was refused by the Advisory Committee after consideration thereof.

(viii) To the best of my knowledge, information and belief, every petition requesting the exercise of the Prerogative of Mercy is determined by the Advisory Committee on the Power of Pardon on its particular facts."

With respect to Charles' reference to the commutation of the death sentence passed on Chadee, it would be convenient to note here, that it is apparent from the record of the case on appeal against the applicant's conviction, that Chadee's role in the murder was a passive one and certainly not that of a principal in the first degree as the applicant's was.

The applicant swore to an affidavit thereafter in answer to Charles' allegations, but except for repeating the claims therein that he was incarcerated under inhuman conditions and suffering mental agony, he encumbered it with allegations and dissertations that were wholly irrelevant to the issues agitated before the learned judge. Moreover, the contents thereof raised questions as to whether he was the sole and original author thereof. However that maybe, it is only necessary to note here, that Charles was cross-examined on his affidavit at the hearing, and that the learned judge not only accepted his evidence that the applicant was well cared for by the Prison Authorities, but that the circumstances of his incarceration were within those authorised by an "existing law", namely, the Prison Rules dealing with prisoners under sentence of death. (Rule 294 - 296 of the Prison Rules Ch. 11 No.7). Before this Court, counsel for the applicant accepted as unassailable, the finding of the learned judge that the applicant was well cared for in prison.

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No. 13

Judgment of Sir Isaac Hyatali C.J.

5th May, 1978.

(Continued)

On 15 April, 1977, when the hearing of the motion began, leave was sought and granted to amend it to allege, in compliance with O.55 of the Rules of the Supreme Court 1976, the particular breaches of the New Constitution of which the applicant complained. In pursuance thereof, counsel alleged infringements in relation to the applicant of (i) section 4(a) the right to life, liberty and security of the person and the right not to be deprived thereof except by due process of law; (ii) section 4 (b) - the right to equality before the law and the protection of the law; (iii) section 4(d) - the right to equality of treatment from any public authority in the exercise of its functions; and (iv) section 5(2)(b) - the right not to be subjected to cruel and inhuman treatment or punishment.

As the hearing proceeded however, counsel abandoned the allegation that s. 4(b) was infringed in relation to the applicant, and conceded that the imposition of the death penalty on him could not be successfully challenged as unconstitutional; but with the leave of the learned judge, he withdrew the claim for an order that the sentence of death be commuted to a sentence of life imprisonment, and substituted therefor, a prayer for relief in the following terms:

> "(1) a declaration that the threat of and/or carrying out of the sentence of death passed on the applicant is unconstitutional, null and void and of no effect; and
>
> (2) an order that the Government of Trinidad and Tobago and/or the Registrar of the Supreme Court and/or the Commissioner of Prisons be restrained from executing the applicant."

The substance of counsel's submissions before the learned judge and the authorities relied on were as follows:

1. The due process provision in s.4(a) of the New Constitution recognised that the applicant had a legal right to be executed within a reasonable time. The State however was guilty of inordinate delay for a period of eight months in carrying out his execution and consequently to execute him after such delay would offend s.4(a) and be unconstitutional (de Freitas v Benny (1975) 3 W.L.R. 388; R v Ogle (1966) 11 W.I.R. 439).

2. The inordinate delay aforesaid, was also tantamount to the imposition on the applicant of cruel and unusual treatment or punishment in contravention of s. 5(2)(b) of the New Constitution because such an imposition was a punishment over and above the death penalty passed on him. (Hartung v The People 22 N.Y. 95).

3. Further, such treatment or punishment of the applicant was compounded by the combination of "aggravating factors such as the long wait, the uncertainty, the mental anguish, the procrastination of the Executive, the threat of death including the tauntings of Prison Officers, and the physical conditions and other attendant circumstances of his incarceration". These factors, it was said, constituted the imposition of double punishment on the applicant and violated the due process provisions of s. 4(a) or the cruel and unusual treatment and punishment provisions of s.5(2)(b) or both. (Hartung v The People (supra))).

4. The grant of a reprieve to Edward Chadee and none to the applicant savoured of discrimination, and constituted a denial to him of equality of treatment by a public authority in the exercise of its functions contrary to s.4(d) of the New Constitution.

5. Trinidad and Tobago having subscribed to the Universal Declaration of Human Rights on 18 September 1962, was obligated to enact legislation outlawing cruel and unusual punishment in accordance with Article 5 of the said Declaration. Such legislation however, had not been enacted and in the absence thereof, the Court was empowered under s.14 of the New Constitution to give effect to Article 5 aforesaid, by declaring the acts complained of by the applicant to be a violation both of this Article and of s.5(2)(b) of the New Constitution. (Ahamad v Inner London Authority, Times March 22 1977; R v Secretary of State for Home Affairs ex parte Bhajan Singh (1975) 2 All E.R. 108).

6. The decision of the Privy Council dismissing the applicant's appeal was not a unanimous one and consequently it raised "some uncertainty as to the guilt of the applicant beyond reasonable doubt" having regard to the provisions of s. 16 of the Jury Ordinance Ch. 4 No.2 which required a unanimous verdict for a conviction of murder.

The learned judge was not impressed with any of the submissions. In an instructive and lucid judgment he dealt with and rejected all the submissions of counsel, except the sixth. It would appear that by inadvertence he omitted to consider this submission, but it is of no moment in this appeal, since it is not only devoid of merit, but was not pursued before us. And of the fourteen errors of law specified in the notice of appeal, counsel in his contentions before this Court confined himself to three only and abandoned the rest. In these circumstances it is unnecessary to examine in any detail the reasons given by the learned judge for rejecting the submissions made before him. The three errors of law argued in this Court were, that the learned judge erred in holding;

(1) that the State was not guilty of inexcusable procrastination in carrying out the execution of the applicant;

(2) that his incarceration for a period of 8 months after the presentation of his petition for Mercy, was not tantamount to the imposition of illegal punishment on the applicant; and

(3) that the said procrastination and illegal punishment, did not constitute an infringement of the applicant's right not to be deprived of his life, except by due process of law, and not to be subjected to cruel and unusual treatment or punishment.

On the footing that the affirmative of all these propositions were upheld as valid, counsel sought a declaration from this Court in these terms:

"that the carrying out of the sentence of death imposed on the applicant is unconstitutional, null and void and of no effect, onthe ground that the State after the dismissal of his appeal by the Privy Council, imposed illegal punishment on him by its procrastination in carrying out his execution, and on the ground that it is an

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infringement of his right not be deprived of his life except by due process of law, and not to be subjected to cruel and unusual treatment or punishment."

Counsel intimated, that that declaration was the only relief he was seeking on behalf of the applicant and that he was abandoning all other claims. In the final analysis therefore, the three principal orders claimed in the notice of motion filed on 15 March 1977, and on the basis of which the applicant's execution was respited, were expressly abandoned. It will be recalled that they were claims for orders (a) that the sentence of death passed on the applicant was unconstitutional,null and void because of the State's procrastination in executing the applicant; (b) that the Government of Trinidad and Tobago and/or the Registrar and Marshal and/or the Commissioner of Prisons be restrained from executing the applicant; and (c) that the sentence of death on the applicant be commuted to life imprisonment. Abandoned too, were the submissions (i) that the applicant was denied equality of treatment and was discriminated against, by reason of the fact that Edward Chadee was granted a reprieve and the applicant was not; (ii) that the Court was empowered under s. 14 of the New Constitution to give effect to Article 5 of the Universal Declaration of Human Rights; and (iii) the dismissal of the applicant's appeal by the Privy Council by a majority of three to two raised uncertainty as to the guilt of the applicant beyond reasonable doubt. The mere recital of these claims and submissions suffices in my judgment, to condemn them as preposterous, and I would only add to that observation, that it is regrettable that the Court below was ever troubled with them.

The declaration now sought is grounded on two main complaints, namely, (a) that the State was guilty of inexcusable procrastination for eight months in executing the applicant; and (b) that his incarceration for the said period of eight months was tantamount to the imposition of illegal punishment on the applicant. No complaint was made about his incarceration from the date of his conviction on 16 July 1973, to the dismissal of his appeal by the Privy Council on 20 July 1976, a period of some thirty-six months, or from the date of the filing of his motion herein on 15 March 1977 to the present time, a period of more that twelve months. So that out of a total period of incarceration for some fifty-six months, the applicant is aggrieved only in respect of a period of eight months thereout.

The complaint about procrastination, as it was ultimately put, was that the State's failure to appoint an Advisory Committee following the inauguration of the New Constitution

on 1 August 1976, was inexcusable, as there was ample authority under the transitional provisions of the Act to do so. No complaint was made, and indeed none could have been made with any hope of success, that the Advisory Committee appointed on 13 December 1976under the New Constitution, was guilty of procrastination in dealing with the applicant's petition for mercy, or that the President was guilty of procrastination in issuing the warrant of execution. The true extent of the delay complained of therefore, is from 1 August 1976 to 13 December 1976, a period of approximately four and a half months.

By 1 August however, the enactment of the New Constitution, the dissolution of Parliament and the impending general elections had encircled the applicant's petition for mercy. It was common knowledge at the time, that citizens regarded the general elections under the New Constitution as one of the most significant events in their political and constitutional history, and that many of them were filled with the expectation that material changes in representation would take place. In these circumstances, It was eminently reasonable, in my judgment, to defer the appointment of the Advisory Committee under the New Constitution until the will of the people had been expressed, and a new government formed. I agree with counsel for the applicant, that under the transitionalprovisions of the Act, (see ss. 14 and 17) an Advisory Committee could have been properly appointed immediately after the New Constitution became operative. But unless it can be said with justification (and in my judgment it cannot) that the State acted from improper motives in omitting to appoint such a Committee before 13 December 1976, an accusation which counsel declined to make, I am unable to accept that the State was guilty of unreasonable delay or "inexcusable procrastination" as it was described, in carrying out the sentence of death passed upon the applicant.

In my judgment therefore, the true period of delay, which I have demonstrated to be a period of four and a half months, cannot be regarded as the imposition of illegal punishment on the applicant. But even assuming that it could have been so held, I find it difficult to accept the proposition of counsel as he finally framed it, that the imposition of the alleged illegal punishment on the applicant, transformed the death sentence passed on him into a sentence of a wholly different character, and that by reason thereof it has become or is now unconstitutional to carry out the death sentence. In aid of that proposition, he quoted the American decision of Hartung v The People (supra). In fact he relied heavily on that decision, and made it the basis of his whole case for the declaration sought.

The actual report of that decision was not available to the learned judge nor to this Court and in the result judgment

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was reserved on 11 April last to obtain a transcript of it. It has since become available. The headnote to the case sets out the questions which the Court had to decide and the answers it gave. It is as follows:

"Chapter 410 of the Laws of 1860, an act in relation to capital punishment, repealed all those portions of existing statutes which provided for the punishment of death on convictions for crime, without any saving clause as to offences already committed. The 10th section declared convicts for murder sentenced under the former law, or awaiting sentence, to be punishable, not under the law prevailing when the offense was committed, but 'as if convicted of murder under this act.' The plaintiff in error was convicted of murder under the old law, and the judgment had been affirmed in the Supreme Court, and the writ of error was pending in this Court when that act was passed.

Held, that the repeal of the law after conviction arrested the judgment; and

Held, further, that it was not competent for the Legislature, after the conviction of the prisoner, to change the punishment which the law had annexed to the offense, for another and different punishment, as was attempted to be done in this case.

It seems, that it would be competent for the Legislature by a general law to remit any separable portion of the prescribed punishment, or to effect a change in the matter of prison discipline or penal administration, which should apply to past as well as future offenses.

But the law of 1860 is within the condemnation of the Constitution as an ex post facto law, in that it changes the punishment, after the commission of the offense, by substituting for the prescribed penalty a different one; and furthermore, in that it prescribes one year's imprisonment, at hard labour, in a State prison, in addition to the punishment of death. The 10th section is, therefore, unconstitutional and void".

At p. 106 Denio, J. who delivered the judgment with which the other judges concurred stated as follows:

"It is enough to bring the law within the condemnation of the Constitution, that it changes the punishment, after the commission of the offence, by substituting for the prescribed penalty a different one."

and at p. 108 he continued thus:

"With the expediency of the change considered as a rule to be applied to future cases we have nothing to do, but we feel bound to say that in its application to offences which had been committed before the act was passed, it was a violation of the constitutional provision under consideration.

We are, therefore, of opinion that the 16th section of the law in question as applied to the present case, is an ex post facto law, and that it is unconstitutional and void."

The case is referred to and analysed in the 1872 Reprint of Cooley's Constitutional Limitations. At p.272 the author made this pertinent observation:

"This decision has since been followed several times in the State of New York and it must now be regarded as the settled law of that State that 'a law changing the punishment for offenses committed before its passage is ex post facto and void under the Constitution, unless the change consists in the remission of some separable part of the punishment before prescribed, or is referable to prison discipline or penal administration as its primary object'. " (per Davies, J. in Ritzky v The People N.Y.124)

This Court is, of course, not bound by that decision but even if it were, it is manifest that it is of no assistance to the proposition advanced by counsel for the applicant.

At the end of the day therefore, counsel failed to make good the two main complaints on which he grounded his claims for the declaration. Even if he could have done so however, the declaration sought could not, in my view, have been granted at least for these two reasons: (1) to grant a declaration that it would be unconstitutional to carry out a sentence of death lawfully imposed under the authority and in pursuance of a valid law, is to grant a declaration to the effect that both the law and the sentence imposed thereunder are invalid. This is plainly beyond the competence of this Court; and (2) the nature of the declaration sought is not one which could be properly

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embraced under "orders", "writs" or "directions" within the meaning of s.14(2) of the New Constitution. See in this connexion Maxwell v Department of Trade (1974) 2 All E.R. 122, 129 and Seervai's Constitutional Law of India, Vol. 2, 2nd Edn. 817.

For these reasons I would dismiss the appeal. Before parting with the case however, I feel constrained to observe that its devious history, forensic and otherwise, which I have been at pains to set out at some length, demonstrate that s.14 of the New Constitution is capable of being deployed for purposes, which its architects could not have intended or contemplated. One of the crucial pillars upon which the due administration of justice rests, is dependent for its strength and vitality on the deeply-rooted maxim of the law, that it is in the public interest that there should be some end to litigation: interest rei publicae ut sit finis litium.

Continued respect for this principle is indispensable, not only to the successful operation of our system of law and justice enshrined in the New Constitution, but to the preservation of the people's faith in its integrity and magnificence. But the facts that it is possible under this very system, for a convicted person who has unsuccessfully pursued and exhausted all his remedies by way of appeal, to invoke the provisions of s.14 nevertheless, for the purpose of requiring the Supreme Court to investigate afresh, and to pronounce a new on, the validity of his conviction or sentence, on the ground that both of them are, or either of them is, "unconstitutional, void and of no effect ", makes a mockery of the maxim referred to. To subject the already overloaded machinery of justice, to the grave evils which a multiplicity of suits and actions in respect of the same matter is liable to generate, is to deepen the dis-illusionment of those who justifiably complain about its slow rate of speed and, what is worse, to hold it up to the contempt and ridicule of law abiding citizens.

In so saying, I must make it abundantly clear, that I cast no reflection on counsel, who is perfectly entitled to employ all proper means as are available to him under the law, to promote and defend the interests of his client. But in the light of the experience which this case has provided, I consider it my duty as head of the Supreme Court to urge the powers that be, to take a fresh look at s.14 of the New Constitution, for the purpose of considering whether it is not essential now, to attach to its provisions, as other Commonwealth countries have done, such checks and balances as are reasonably necessary, to avoid the possible evils to which I have drawn attention.

Isaac E. Hyatali
Chief Justice.

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Judgment of M.A. Corbin J.A.

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TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 33 of 1977.

STANLEY ABBOTT — Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO
THE REGISTRAR OF THE SUPREME COURT
THE COMMISSIONER OF PRISONS — Respondents

May 5, 1978.

R. L. Maharaj - for the appellant,
C. Brooks and Mrs. J. Permanand - for the respondents.

JUDGMENT

Delivered by M.A. Corbin, J.A.

I agree and think this appeal should be disposed of very briefly because there is no merit in it.

It arises out of an originating motion which was filed on 15th March, 1977, but the relief claimed therein and the grounds on which it was sought have been amended on several occasions with leave between that date and the hearing of this appeal. In this Court, Counsel confined his arguments to two main grounds of complaint:

(1) That the State was guilty of inexcusable delay or procrastination in executing the appellant, and,

(2) That his detention for a period of eight months after sentence of death was tantanmount to the imposition on him of additional and illegal punishment.

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He informed the Court that he was not asking for an order for the release of the appellant nor for compensation but only for a declaration that to carry out the death penalty in these circumstances would amount to an infringement of his right not to be deprived of life and liberty except by due process of law, and would be unconstitutional.

The full and accurate history set out by the learned President which I adopt showing the circumstances leading up to the filing of this motion indicates clearly that the only period during which the appellant could reasonably have alleged any possible delay or procrastination on the part of the State in carrying out the sentence was from 1st August, 1976 to 13th December, 1976. This is a period of 4½ months. After that date an application which he had made for mercy was being considered by the new Advisory Committee, appointed when the country became a Republic, and which in due course advised the President of the Republic, of its deliberations.

Counsel conceded that he could not rely on the contention rejected by the Privy Council in de Freitas v Benny (1976) A.C. 239 that there was an unwritten law in force which prescribed a period of five months as the norm for carrying out the death penalty, but he submitted instead that the detention of the appellant for a period of eight months after sentence of death was passed on him was tantamount to an additional and illegal punishment, and that it would not be unconstitutional to carry out that sentence. Reliance for this submission was placed on the case of Hartung v The People 22 N.Y. 95. This case is of persuasive value only but even so it is, in my judgment, of no avail to the appellant. That decision dealt with the constitutional validity of a law which changed the punishment for offences committed before its passage, and has no relevance to the circumstances of this appeal.

It was held there that it was an 'ex post facto' law and violated the amendment of the American Constitution which prohibited the enactment by any state of 'ex post facto' laws.

As to the appellant's complaint of delay in appointing a new Advisory Committee, the record shows that the political events taking place during that period were such as to make an ommission on the part of the State to appoint an Advisory Committee prior to 13th December, 1976, justifiable.

In the absence of any suggestion, let alone evidence, of mala fides on the part of the State it seems to me that there were valid reasons why the sentence was not carried out before 15th March, 1977. I am therefore of the opinion that the State has not been guilty of inexcusable delay or procrastination.

In the result, I am satisfied that no case has been made out for the declaration sought. I would dismiss the appeal.

Maurice A. Corbin,
Justice of Appeal.

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TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

Civil Appeal No. 33 of 1977.

STANLEY ABBOTT Appellant

And

THE ATTORNEY GERERAL
OF TRINIDAD AND TOBAGO
THE REGISTRAR & MARSHAL
OF THE SUPREME COURT
THE COMMISSIONER OF PR$SONS
Respondents

No.15

Judgment of Kelsick J.A.

5th May, 1978.

Coram: Sir Isaac Hyatali, C.J.
M.A. Corbin, J.A.
C.A. Kelsick, J.A.

May 5, 1978.

R. L. Maharaj - for the appellant
C. Brooks and Mrs. J. Permanand - for the respondents.

J U D G M E N T

Delivered by Kelsick, J.A.:

The historical background to this appeal, including the shifting of his ground by counsel for the appellant and of the nature of the redress sought by him have been fully reviewed in the judgment of the learned Chief Justice.

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The originating motion in these proceedings was filed against the Respondents under s.14 of the Republican Constitution ("the 1976 Constitution") which so far as material read:

"14. (1) For the removal of doubts it is hereby declared that if any person alleges that any of the provisions of this Chapter has been, is being, or is likely to be contravened in relation to him, then without prejudice to any other action with respect to the same matter which is lawfully available that person may apply to the High Court for redress by way of originating motion.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application may by any person in pursuance of subsection (1),

. . . . . .

and may, subject to subsection (3), make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of, any of the provisions of this Chapter to the protection of which the person concerned is entitled.

(3) The State Liability and Proceedings Act, 1966 shall have effect for the purpose of any proceedings under this section."

By O.55 it is provided that:

"(1) An application to obtain redress in pursuance of section 6(1) - now s.14 (1)- of the Constitution must be made by originating motion.

(2) The application must be supported by an affidavit by the applicant showing that it is made at his instance and setting out the provision of the Constitution which he alleges has been, is being or is likely to be contravened in relation to him and his reasons for so alleging."

The provisions eventually alleged to have been contravened are s.4(a), and s.5(2)(b) which is to be construed with s.5(1). So far as relevant they enact:

"Recognition and declaration of rights and freedoms

4. It is hereby recognised and declared that in Trinidad and Tobago there have been existed and shall continue to exist without discrimination by reason of race, origin, colour religion or sex, the following fundamental human rights and freedoms, namely:-

(a) the right of the individual to life, liberty, security of the person .... and the right not to be deprived thereof except by due process of law.

Protection of rights and freedoms

5.(1) Except as is otherwise expressly provided in this Chapter .... no law may abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared.

(2) Without prejudice to subsection (1), but subject to this Chapter ..... Parliament may not -

". . . . . .

(b) impose or authorise the imposition of cruel and unusual treatment or punishment".

The corresponding provisions to ss.4, 5 and 14 are to be found in ss. 1, 2 and 6 of the 1962 Constitution. Section 2 was couched in the following terms:

"2. Subject to the provisions of section 3, 4, and 5 of this Constitution, no law shall abrogate, abridge or infringe or authorise the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognised and declared and in particular no Act of Parliament shall -

(a) .....

(b) impose or authorise the imposition of cruel and unusual treatment or punishment.

Bernard J. drew attention to two changes in the wording of the analogues to ss. 5 and 14 of the 1976 Constitution. These are that the prohibitions are now placed in a separate subsection of s. 5 and that the Court's jurisdiction under s. 14 to make

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orders etc. is subject to the restrictions in relation to proceedings against the State, by the State Liability and Proceedings Act, 1966.

It is not disputed that redress may be sought for infringement of rights and freedoms specified in s.4 of the 1976 Constitution, not only by Acts of Parliament, but also by acts (including omissions) of the executive or the judiciary.

In Hinds v. The Queen (1976) 1 All E.R. 360, Lord Diplock, at page 360, letter g, stated:

> " The more recent constitutions on the Westminister model, unlike their earlier prototypes, include a chapter dealing with fundamental rights and freedoms. The provisions of this chapter form part of the substantive law of the state and until amended by whatever special procedure is laid down in the Constitution for this purpose, impose a fetter on the exercise by the legislature, the executive and the judiciary of the plenitude of their respective powers."

In Ramesh Lawrence Maharaj -v- The Attorney General (Privy Council No. 21 of 1977) redress was given in respect of the contravention by a judge of the High Court of the appellant's right not to be deprived of his liberty except by due process of law. The following extract from the majority judgment delivered by Lord Diplock is opposite:

> "The combined effect of these sections (ss. 1, 2 and 3), in my judgment, gives rise to the necessary implication that the primary objective of Chapter 1 of the Constitution is to prohibit the contravention by the State of any of the fundamental rights or freedoms declared and recognised by s.1."

Bernard J. held that the appellant derived his locus standi under s.14 from his complaint that the executive had attempted to deprive him of his life otherwise than by due process of law.

However, he decided that the appellant was not entitled to rely on s.5(2)(b) since he was not alleging an infringement by a legislative instrument of Parliament passed after 1st August, 1976. In my opinion he misdirected himself in this regard. Section 5 merely particularises certain acts which amount to contraventions of a right or freedom in s.4. The prohibitions are set out in s.5 in order to exempt from

their operation or scrutiny certain specified laws. These are existing laws (s.6), laws passed during an emergency (s.8), Acts passed by prescribed majorities of both Houses of Parliament (s.13), and Acts amending the Constitution by the required majorities (s.54). Support for this view may be found in the pronouncement of Lord Diplock in De Freitas v. Benny (1967) A.C. 239 at p. 245:

> "Section 2 is not dealing with enacted or unwritten laws that were in force in Trinidad or Tobago before 31 August, 1962. What it does is to ensure that subject to three exceptions no future enactment of the Parliament established by Chapter IV of the Constitution shall in any way derogate from the rights and freedoms declared in section 1. The three exceptions are: Acts of Parliament passed during a period of public emergency and authorised by sections 4 and 8; Acts of Parliament authorised by section 5 and passed by the majorities in each House that are specified by that section; and Acts of Parliament amending Chapter 1 of the Constitution itself and passed by the majorities in each House that are specified in section 38."

So as to constitute a denial of life or liberty without due process of law under s. 4 and consequently to be redressible under s.14, cruel and unusual punishment, within the meaning of s. 5(2)(b) may be imposed -

either (a) by or under an Act of Parliament passed after 1st August, 1962, by ordinary majorities of both Houses;

or (b) by an administrative or executive or judical act.

In effect the appellant in this case is alleging that there was inordinate and inexcusable delay in carrying out the sentence upon him, that this amounted to double and also cruel and unusual punishment and thus was a denial of his right not to be deprived of his life except by due process of law.

Before this Court Counsel for the appellant ultimately contented that the appeal raised two simple but important issues namely:

(i) whether the execution to be carried out on the appellant was without due process of law by reason of delay in issuing the death warrant and instructions for execution of the appellant, and

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(ii) whether the appellant is being subjected to cruel and unusual treatment by the facts and circumstances that arose since the dismissal of his appeal by the Judicial Committee on the 20th July, 1976.

He submitted that the answer to the first was in the negative and that to the second was in the affirmative; and on that account the appellant was entitled to, and requested as his only form of redress, a declaration in the following terms:

> ". . . that the carrying out of the sentence of death imposed on the applicant is unconstitutional, null and void and of no effect on the ground that the State after the dismissal of his appeal by the Privy Council imposed illegal punishment on him by its procrastination in carrying out his execution and on the ground that it is an infringement of his right not to be deprived of his life except by due process of law and not to be subjected to cruel and unusual treatment or punishment."

It is not surprising that the application for orders directed to the State or its agencies were finally abandoned by Counsel for the appellant. Section 22(2) of the State Liability and Proceedings Act, 1966, which is applied to these proceedings by s. 14(3) of the Constitution, expressly forbids the Court to grant relief by way of injunction or specific performance against the State.

As to whether the delay amounted to cruel and unusual punishment or treatment, Bernard J. stated:

> "Since the constitutional validity of a legislative instrument passed after the present Constitution has not been challenged in this case, I hold that the applicant cannot rely here upon the provisions of section 5(2)(b) of the said present Constitution."

I have already expressed my dissent from this conclusion of law.

In considering whether there was a contravention of "due process" the learned judge declared:

> "... the acts complained about such as procrastination and the like and the physical circumstances of the applicant's incarceration are themselves ordained and/or permissible under the existing laws. See for example s.59 of the Ordinance and

the Prison Rules, Ch. 11 No. 7 - Part V - Special Rules for Particular Classes of Prisoners - Prisoners under sentence of death - Rule 294 - 296. Indeed, so far as the Prison Authorities are concerned the evidence disclosed, and I accepted it, that the applicant was well cared for. Mental anguish and anxiety and the threat of death are not matters peculiar to a person such as the applicant placed as he now is. Neither the State nor its servants or agents can therefore be responsible for this."

It is note-worthy that the conditions under which the appellant was imprisoned were the same throughout the period complained of, and the much longer period in respect of which no complaint was or could be made. In partiuclar, the appellant during the entire period had some hope of the sentence being reprieved, for it was only shortly before his motion was filed on 15th March, 1977 that he was informed that his petition for mercy had been refused on 23rd February, 1977.

Counsel for the appellant indicated that he did not question the finding of fact by the trial judge that the appellant was well cared for.

There have been judicial pronouncements as to what constitutes cruel and unsual punishment. It should be emphasised that the punishment must be both cruel and unusual.

In Collymore v. The Attorney General (1967) 12 W.I.R. 5 Wooding C.J. at p.20 /letter 1/ said:

" I would interpret 'cruel' in its relation to the treatment or punishment prohibited by s.2(b) as not merely severe or harsh but as inhumane and inflictive of human suffering."

Section 2(b) of the Canadian Bill of Rights, which is the present of s.2(b) of the 1962 Constitution, wasconstrued by the Courts in Ontario in the two following cases:

In Regina v. Buckler (1972) 2 O.R. 614, it was alleged that s, 660 of the Criminal Code contravened s. 2(b) of the Bill of Rights. Section 660 authorised the Court, on application, to impose a preventive detention in lieu of the sentence prescribed for an indicable offence or in addition to that sentence if it had expired. The Provincial Court judge concluded that the word 'cruel' bore the connotation of 'physical pain or degradation'. He did not consider that incarceration for an indeterminate period permitted under s.660 was unusual, as it was a form of punishment that was resorted to in respect of recidiviats, habitual criminals, dangerous sexual offenders and persons of unsound mind.

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(Continued)

In Regina v. Roestead (1972) O.R. 814 at p.824 the County Court judge decided that s. 661(3) of the Criminal Code, which required a Court to impose upon a dangerous sexual offender a sentence of preventive detention in lieu of, or to follow another sentence, was not a cruel and unusual punishment because its purpose was to protect the public from likely pain, injury or other evil. The judge expressed the view that indeterminate detention without the infliction of physical pain and degradation might well be considered cruel, and that whether the punishment is cruel depends upon the object of the punishment as set out in the legislation. He ruled that the punishment in that case was not cruel.

The appellant relied on the American case of Hartung v. The People 22 N.Y. 95 to bolster his contention that the appellant underwent double punishment and suffered mental anguish through uncertainty as to when he would be executed, which was cruel and unusual punishment. That case is not relevant and is of no assistance to the appellant. Mrs. Hartung was convicted of the murder of her husband and sentenced on the 9th January, 1960 to death by hanging. On 14th April, 1860 an Act (The 1860 Act") was passed. This repealed the enactment prescribing the punishment of death by hanging under which the appellant was sentenced. The 1860 Act, by implication only ordained death as the punishment for murder in the first degree, but made no provision for the manner in which it was to be carried out. The Act also provided that the convict should be imprisoned with hard labour from the date of his sentence to that of his execution, and that this interval should be at least one year. It also enacted that persons who were under sentence of death when the 1860 Act came into force should be punished as if they had been convicted of first degree murder under 1860 Act.

Section 9 clause 3 of the Constitution of the United States decrees that "No Bill of Attainder or ex post facto law shall be passed."

Denio J. held that the 1860 Act was prospective and did not apply to the crime committed by the appellant, since to give the Act retrospective effect would offend against the Constitution. He declared, obiter, that a law reducing the punishment or remitting a part thereof might validly have retrospective effect, but not one increasing or adding to the punishment. As there was no law in existence which authorised the carrying out of the sentence by hanging the judgment of the trial Court was reversed and a new trial was ordered.

There is a foot note to the Law Report that on the second trial the prisoner pleaded this reversal in bar, and the Court on a second writ of error held it to be equivalent to an acquittal of the charge.

Phillips J.A. interpreted the words "due process of law" in Lasalle v. The Attorney General (1971) 18 W.I.R. 379 at p. 391, G-I:

> " The concept of 'due process of law' is the antithesis of arbitrary infringement of the individual's right to personal liberty; it asserts his 'right to a free trial; to a pure and unbought measure of justice'. While it is not desirable and indeed not possible to formulate an exhaustive definition of the expression it seems to me that as applied to the criminal law . . . . it connotes adherence, inter alia to the following fundamental principles:
>
> "(i) reasonableness and certainty in the definition of criminal offences;
>
> (ii) trial by an independent and impartial tribunal;
>
> (iii) observance of the rules of natural justice."

After citing the above, Bernard J. added his quota in the following passage of his judgment, with which I concur:

> "In my opinion 'due process of law' would normally be completed when the Courts of law have finished their respective tasks. In my view, however, due process of law can be breached although the Courts have finished their respective tasks. One can envisage for example the case (though highly unlikely) of a threatened form of the death penalty otherwise than by what is now ordained by law. If this be the case this in my view would be in breach of the due process clause and the aggrieved party can pray in aid the provisions of section 4(a) of the present Constitution."

This approach does not restrict the meaning of "due process of law" "according to law" or "procedure established by law". It recognises that s. 4, and in particular s.4(a) may be invoked in cases which cannot be brought within any of the particular procedural protections specified in s.5.

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In so far as delay may possibly found a basis for complaint it must be such as is not attributable to the appellant.

I do not agree with the submission of Counsel for the appellant that the Advisory Committee on the Prerogative of Mercy ("the 1962 Committee") constituted under s. 71 of the 1962 Constitution, was continued in existence after the commencement of the 1976 Constitution on 1st August, 1976. There was no provision in the Constitution of the Republic of Trinidad and Tobago Act 1976 ("the Act") preserving the existence of the 1962 Committee.

However, I agree with him that the Advisory Committee on the Power of Pardon ("the 1976 Committee") could have been fully constituted under s. 88 of the 1976 Constitution at any time after the 1st August, 1976. The holders of the offices of Prime Minister, Minister and Leader of the Opposition were by s. 14 of the Act deemed to have been appointed to similar offices under the appropriate sections of the 1976 Constitution. Accordingly, the Minister/ Chairman and the unofficial members of the Committee could have been appointed.

In my judgment inexcusable delay should be viewed objectively, and in so doing only legal criteria should be applied in determining whether the delay was reasonable and excusable. The political events from 26th July to 13th December, 1976, deposed to by Randolph Charles in his affidavit and reproduced in the judgment of the learned Chief Justice, that were relied on by the trial judge, the learned Chief Justice and Corbin J.A. as valid reasons for excusing the delay, were in my view insufficient for that purpose.

I also find myself in disagreement with the conclusion arrived at by my learned brothers that lack of improper motives, or mala fides, can of itself wholly exonerate the executive for the entire delay in carrying out the sentence of death.

The interval between the decision of the Privy Council (20th July, 1976), and the date of the warrant of execution (12th March, 1977) was just under eight months. There was too short a period for the petition for mercy dated 26th July, 1976 to be processed by the 1962 Committee before the 1962 Constitution expired on the 1st August, 1976.

The 1976 Committee might reaonably have been fully constituted by the first week in September, 1976, so that the delay for which the executive is accountable is between six and seven months.

There is no evidence adduced by the appellant as to what was the usual interval for processing petitions of mercy. Time must be allowed, after the delivery of the decision of the Privy Council, for the receipt of the official judgment by the executive, for preparation of the documents (which depends on the length of the proceedings), for their circulation to members of the Committee, for the summoning and holding of the meeting or meetings, for the writing up of the minutes and their confirmation, for the transmission of the recommendation of the Committee to the President, for its consideration by him, and for fixing of a date for the execution after consultation with the relevant authorities. Regard must also be had to the various other petitions that are referred to the Committee for attention.

The appellant has not established that the period of six to seven months constituted unusual and/or inordinate delay in fixing the date for the execution.

Since the period of delay in this case has not been proved to be inordinate, I have not found it necessary to decide whether delay can amount in law to the denial of due process. The question was agitated but not determined in De Freitas v. Benny (supra). Lord Diplock pointed out that procrastination on the part of the Crown or the Courts was not alleged, and that, except for a period of eight days, the delay between the dismissal of the appellant's petition to the Privy Council against his conviction and the commencement of the proceedings under s.6 of the 1962 Constitution was due entirely to steps taken by the appellant.

It may well be that to obtain redress by way of a declaration hereinafter mentioned that the applicant would be required to prove not only that the delay was inordinate and inexcusable in law, but also that in consequence of such delay, he has been gravely prejudiced or has suffered serious harm or damage.

In the result I would hold that the delay complained of by the appellant in not carrying out the death penalty was not cruel and unusual punishment within the meaning assigned to that expression in Collymore, Buckler or Roestead (supra) and that it was not otherwise a denial of the appellant's rights not to be deprived of his life except by due process of law.

In any event I would have decided that the appellant was not entitled to the form of redress sought. In one breadth he is alleging that he had a right to be executed and in another he is complaining against the carrying out of the execution. He is not, as might have been expected, seeking

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5th May, 1978.

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a declaration that his detention for the period in question was illegal and that consequently he is entitled to damages in respect thereof. Neither is he requesting a declaration that he is entitled to have an early date fixed for his execution, although this would have been unnecessary because the warrant for his execution was signed three days before the originating motion in these proceedings was filed.

I would dismiss this appeal for the reasons stated.

C. A. Kelsick
Justice of Appeal.

10

ORDER GRANTING CONDITIONAL LEAVE TO APPEAL TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

TRINIDAD AND TOBAGO:

In the Court of Appeal.

IN THE COURT OF APPEAL

No. 16.

H.C.A. No. 739 of 1977.
Civil Appeal No. 33 of 1977.

Order granting Conditional Leave to Appeal to the Judicial Committee of the Privy Council.

Between

STANLEY ABBOTT Appellant

A n d

THE ATTORNEY GENERAL
OF TRINIDAD AND TOBAGO

THE REGISTRAR OF THE
SUPREME COURT, MR GEORGE BENNY

THE COMMISSIONER OF PRISONS
MR RANDOLPH CHARLES Respondents

Dated the 11th day of May, 1978
Entered the 22nd day of May, 1978.

Before the Honourable Mr. Justice Phillips
Mr. Justice Scott
Mr. Justice Kelsick.

UPON the Motion of the above-named appellant of Thursday May 11, 1978, for leave to appeal to The Judicial Committee of the Privy Council against the judgment of this Court comprising the Honourable Sir Isaac Hyatali, Chief Justice, The Honourable Mr. Justice Corbin and the Honourable Mr. Justic Kelsick, Justices of the Appeal, delivered herein on May 5, 1978.

UPON reading the affidavit of Glenda Patricia Morean sworn to on May 5, 1978 and filed herein;

UPON hearing counsel for the appellant and counsel for the respondents;

THIS COURT DOTH ORDER

that leave to appeal to the Judicial Committee of the Privy Council against the Judgment of the Court of Appeal delivered herein on May 5, 1978, be and the same is hereby granted to the appellant.

In the Court of Appeal.

No. 16.

Order granting Conditional Leave to Appeal to the Judicial Committee of the Privy Council.

11th May, 1978.

(Continued).

AND THIS COURT DOTH FURTHER ORDER that the appellant do within 60 days from the date hereof in due course take out all appointments that may be necessary for settling the record in such appeal to enable the Registrar of this Court to certify that the said record has been settled and that the provisions of this order on the part of the appellant have been complied with;

AND THIS COURT DOTH FURTHER ORDER that the appellant do within 60 days of the date hereof enter into good and sufficient security to the satisfaction of the Registrar of this Court in the sum of £100 or deposit the said sum of £100 into Court the above being a condition precedent to the further prosecution of this matter. 10

Liberty to apply.

Registrar.

No. 17.

ORDER GRANTING FINAL LEAVE TO THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

In the Court of Appeal.

No. 17.

Order granting Final Leave to Appeal to the Judicial Committee of the Privy Council.

20th July, 1978.

TRINIDAD AND TOBAGO:

IN THE COURT OF APPEAL

H. C. A. No. 739 of 1977.
Civil Appeal No. 33 of 1977.

Between

STANLEY ABBOTT Appellant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

THE REGISTRAR OF THE SUPREME COURT, MR GEORGE BENNY

THE COMMISSIONER OF PRISONS MR. RANDOLPH CHARLES Respondents

Dated the 20th day of July, 1978.
Entered the 2nd day of August, 1978.

Before The Honourable Mr. Justice Corbin
Mr. Justice Scott
Mr. Justice Hassanali.

UPON READING the Motion filed herein on behalf of the above named Applicant/Appellant dated the 5th day of July, 1978 the affidavit of Glenda Patricia Morean sworn to on the 6th day of July, 1978 and the Registrar's Certificate.

AND UPON HEARING COUNSEL for the Applicant/Appellant and Counsel for the Respondents

IT IS ORDERED that final leave be and the same is hereby granted to the Applicant/Appellant to appeal to the Judicial Committee of the Privy Council against the judgment of the Court of Appeal dated the 5th day of May 1978.

Registrar.