

BR. 89.

Trial against

Colonello Massimiliano Caputo

&

Clemente Fantacci

**MILITARY COURTS FOR THE TRIAL OF WAR CRIMINALS**

D.J.A.G's Case No. 19/828

Name of Accused (including Rank, if any)	Arm or Former Arm of the Service	Age	Date and Place of Trial
Colonnello Massimiliano CAPURSO Clemente FANTACCI	Officer, Italian Army.  (Formerly Italian Army)		27, 28 and 29 March 1946  Convened by  Commander, 3 District, CMF.

CHARGES

Charge. COMMITTING A WAR CRIME in that they at SPORTZACOSTA, Italy, on or about 24 February 1943, in the violation of the laws and usages of war were concerned in the killing of Trooper AARON, a British Prisoner of War.

President and Members of the Court (except Legal Member)	Judge Advocate/Legal Member
Colonel F.E. CARPENTER, OBE. Major P.J.H. HEYCOCK Major L. GROUNDSELL	R.A.S.C. BAYS. NORTHAMPTONS.  -N.A.-

Pleaded	Finding
<u>Both accused.</u> Not Guilty	<u>Both accused.</u> Guilty

Sentence and Minute of Confirmation

CAPURSO 8 years imprisonment.  
FANTACCI 15 years imprisonment.

CAPURSO Not Confirmed.  
FANTACCI Confirmed by Commander, 3 District,  
CMF, 20 May 1946, who remitted 7 years  
imprisonment.

When and where Promulgated:—

24 May 1946. (Both accused)

Date of Receipt	To whom sent	Date sent	Purport

GENERAL REPORT OF THE PROCEEDINGS OF A MILITARY COURT.

16024/1/A-3

HELD AT AFRAGOLA ON 27 - 29 MARCH 46 FOR THE TRIAL OF

Colonello Massimiliano CAPURSO  
Clemente FANTACCI.

Charged with

Committing a War Crime  
in that they

at ZFORZACOSTA, ITALY, on or about 24 Feb 1943, in violation and  
of the laws and usages of war, were concerned in the killing of  
Tpr AARON, a British Prisoner of War.

PLEA : Both accused ; Not Guilty.

PROSECUTION.

In his opening address the Prosecutor set out briefly the facts of the case. Col CAPURSO was commandant of a PW Camp of which FANTACCI was one of the guards. A field inside the camp was encircled by an 8ft barbed wire fence; the camp itself was surrounded by a 12 ft wire fence; a low wire followed the inner perimeter of the 8ft fence, being a trip or warning wire. Col CAPURSO issued an order to his guards to shoot prisoners who crossed this inner warning wire. The Prosecutor cited Art 2 of the International Convention Relative to the treatment of Prisoners of War (GENEVA 1929) and chapter XIV para 108 A of the Manual of Military Law; he submitted that Col CAPURSO's order amounted to a War Crime.

On the day in question prisoners were confined in this inner field but were allowed to go to the edge of it to urinate. At about 1700 hrs AARON went to the trip wire for this purpose. The guard FANTACCI shot him dead at a range of 60 - 70 yards.

1st Witness; Pte Charles LANGTON,

Witness described the layout of the camp and in particular the trip wire which was a single strand of wire standing at about 1ft from the ground and about 4 or 5 ft from the field perimeter fence. In many places this wire had been trodden into the ground and could not be seen.

Prisoners were told that if they crossed this wire they would be fired on; witness himself heard this order given only once. At first this order was enforced but later it came to be disregarded.

On the day in question the prisoners were turned<sup>out</sup> into the field while the prison huts were disinfested. They were not allowed to leave the field. About eight sentries were posted on the outside of the field perimeter fence. In the evening, when the prisoners were taking their kit back to their huts, witness was returning to the field for his second load; he saw a sentry raise his rifle but did not hear him speak; he looked in the direction in which the rifle was pointed and saw AARON standing by the fence urinating; if the trip wire had been there AARON would have been standing on it, but there was no wire. Using the fence as a rest the sentry took direct aim and fired; AARON was not looking at him, and there was no noise. When he fell AARON was lying about 3ft from the main fence.

AARON spoke Italian and at times acted as interpreter.

Cross examined by Col CAPURSO's Advocate witness stated that the stakes supporting the trip wire had been burnt and the wire itself trodden into the ground.

Re examined witness stated that there was no wire at all at the spot where AARON was shot.

/to sheet two.....

2nd Witness : Tpr Thomas SPIKINGS.

Witness was a prisoner at the camp in question. He stated that it would not have been possible to crawl through the the perimeter fence of the field. The trip wire was five or six feet from the main fence. Witness had heard the order that prisoners who crossed this wire would be shot read out three or four times by the camp leader. On the day in question prisoners, witness included, had been going to the trip wire to urinate, and had received no warning from the guards. In the evening witness saw AARON urinating over the wire, which was not in good order at that point. A few seconds later there was a shot - witness had heard no shout from the guard - and witness turned and saw AARON on the ground.

Cross examined by Col CAPURSO's advocate witness stated that he did not cross the trip wire because he did not want to be shot.

Cross examined by FANTACCI's advocate witness could not remember whether the order stated that the sentries would shoot without warning.

The Prosecutor handed to the Court affidavits and inter alia those of :-

L/Cpl SPANSWICK.

Witness stated that during the day in question prisoners had stepped up to or over the trip wire, <sup>to urinate</sup> himself included; the rule as to the crossing of this wire was not enforced; witness himself had not stepped over the wire.

Witness did not see AARON approach the wire, but, hearing a shot, turned to see him fall onto the main fence. AARON was about 25 yards from the sentry who fired the shot; no challenge had been given. At all times AARON was in full view of the sentries posted on the top of the outer wall.

Sjt DEVONPORT.

Witness himself stepped over the trip wire to retrieve a tin a few seconds before AARON was shot. He heard a shot and saw AARON's body fall over the trip wire. There had been no challenge.

3rd Witness Sjt PERRY., official interpreter.

Witness produced to the court the statements of :-  
the accused FANTACCI;

FANTACCI saw a prisoner pass over the "line of respect". He shouted and signalled to him to come back,; the prisoner looked at him but paid no attention. FANTACCI then fired.

The order was read by the Corporal of the guard at each guard mounting, stating that arms would be used if any prisoner crossed the line of respect. FANTACCI had seen this order in print, signed by the Camp Commandant.

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The Defence.

The defending advocate for Col CAPURSO addressed the Court:

The fence and trip wire were placed as laid down by higher authority and Col CAPURSO was bound to observe this order. Orders were posted in sentry posts that sentries would not fire without challenging three times. All camp officers and NCO's had strict orders on this point.

/to sheet three.....

1st Witness; the accused Col CAPURSO.

When Col CAPURSO took over the camp in Jan 43 he personally saw that all wire and fences were in order and that the sentry boxes had their orders. He instructed junior officers that care was to be exercised in the use of arms and this instruction was passed on to the men.

Cross examined by the prosecutor. Witness stated that the orders of higher authority were that the warning wire should be 3 metres from the perimeter fence and that prisoners who entered the "area of respect" would be fired on. Witness qualified this order, unofficially and on his own initiative by laying down that sentries would fire at the ground or at the legs of such a prisoner.

Witness had never seen prisoners urinating over the trip wire nor had he seen them sitting in the area of respect.

FANTACCI, the sentry who fired the shot, was not arrested nor was he rewarded in any way. From his story witness thought that he acted legitimately. It would have been possible for AARON to crawl through the field perimeter fence.

2nd Witness : the accused FANTACCI.

Witness stated that the orders to sentries were to shoot at prisoners who entered the area of respect, after verbal warning had been given. He re-iterated that he challenged AARON, both by word and signal more than three times: he thought AARON was getting through the main fence.

Cross examined by the Prosecutor. Witness stated that the orders referred to came from the Camp Commandant. At the spot in question the trip wire was in good condition. Witness did not think AARON was urinating, he was bending down and doing something with his hands close to the main fence. Witness did not rest his rifle before firing.

Six other witnesses, Italian Army Officers on the Staff of Camp 53 and other camps called by Col CAPURSO testified to the general practice in PW camps and to the conditions existing at Camp 53 in particular. It was the consensus of opinion that the "area of respect" was already clearly defined and that the prisoners understood it as such, that orders had been issued by Col CAPURSO that a prisoner would be challenged before being fired upon and that Col CAPURSO had instructed that arms would be used with care and discretion.

Called by FANTACCI, two sentries at PG 53 at the time of the incident stated that they heard FANTACCI challenge the prisoner several times, and saw him signal with his hands. Both witness knew that the orders were to challenge before shooting at a prisoner who had crossed into the area of respect. Col CAPURSO had recommended persuasive methods rather than shooting.

The defending advocate for Col CAPURSO addressed the Court submitting :-

- (a) That the trip wire was intended not as a barrier but as an indication, and that thus its precise physical appearance was immaterial.
- (b) That it was unnecessary to cross the trip wire to urinate.
- (c) That AARON was attempting to escape
- (d) That the orders to the sentries were clear and definite, and that Col CAPURSO had mitigated those orders to the benefit of the Ps W.
- (e) That Col CAPURSO had carried out the orders of higher authority, which he was bound to obey.

/to sheet four.....

The defending advocate for FANTACCI addressed the Court, submitting that a sentry is justified in shooting to prevent the escape of a prisoner. In this case the hour, late evening, and the place, near a wood dump, were suitable for an attempted escape.

The prosecutor addressed the Court. He submitted that Col CAPURSO's order to shoot a prisoner entering the area of respect was unlawful unless there was clear indication that he was attempting to escape. Col CAPURSO knew the order to be irregular but made no protest to higher authority and merely recommended his guards to shoot low.

It was not reasonable to suppose that AARON could have got through the field fence and crossed the intervening ground to the main camp perimeter fence in daylight. Even if he had shouted a challenge FANTACCI should only have fired as a last resort. FANTACCI, in fact, fired not because AARON was trying to escape, but in obedience to his orders.

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The Court Found each Accused Guilty.

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Pleas in mitigation.

A letter dated 2 Aug 43 signed by four British Warrant Officers, camp and sector leaders, was handed to the Court, praising in the highest terms Col CAPURSO's administration of Camp 53 and his fair and humane treatment of Ps W. Col CAPURSO was faced with either disobeying an order or mitigating it as much as he could.

For FANTACCI it was pointed out that he was a peasant of low intelligence, that he obeyed his orders to the letter and that the incident occurred just after a press campaign against the leniency shown to British Ps W.

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The Court passed a sentence of 8 years imprisonment on CAPURSO and a sentence of 15 years imprisonment on FANTACCI.

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On 20 May 46 Major General CLOWES, GOC No 3 District refused confirmation of the finding and sentence of the Court in the case of Col CAPURSO and confirmed the finding and sentence of the Court in the case of FANTACCI, but remitted 7 years of the sentence of 15 years imprisonment.

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