

BR. 97.

Trial against

Salvatore Lencolle

↳

Giuseppe Basile.

Br. 97.

MILITARY COURTS FOR THE TRIAL OF WAR CRIMINALS

D.J.A.G's Case No. 19/836

Name of Accused (including Rank, if any)	Arm or Former Arm of the Service	Age	Date and Place of Trial
Salvatore PARACUOLLO Giuseppe BASILE	Italian Nationals		14 March 1946 AFRAGOLA
			Convened by
			Commander, 3 District, CMF.

CHARGES

JOINT CHARGE. COMMITTING A WAR CRIME in that they at or near VOLTURARE, Italy, on or about April 1942 in violation of the laws and usages of war were concerned in the killing of 3723 Corporal Robert Alfred SMITH, New Zealand Expeditionary Force, and the wounding of 22593 Private Verdun Owen WILKINS, New Zealand Expeditionary Force, escaped Prisoners of War.

President and Members of the Court (except Legal Member)	Judge Advocate/Legal Member
Lt-col G.J. BAKER, MBE Major T.G. FIELD - FISHER Capt. W.D. COOMBS	R.A.S.C. K.R.R.C. 306 Wks Sec R.E.
	- N.A. -

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

Sentence and Minute of Confirmation

PARACUOLLO - 20 years imprisonment
BASILE - 15 years imprisonment

Findings and sentences confirmed by Commander, 3 District, CMF, 23 May 1946, who remitted PARACUOLLO's sentence to 10 years imprisonment and BASILE's sentence to 8 years imprisonment.

When and where Promulgated:—

28 May 1946 (both accused)

Date of Receipt	To whom sent	Date sent	Purport

SERIAL No.13.

GENERAL REPORT OF THE PROCEEDINGS OF A MILITARY COURT

Br. 97
16029/WA

HELD AT AFRAGOLA 14 - 19 MARCH 46 FOR THE TRIAL OF

Salvatore PARACUOLLO
Giuseppe BASILE
Italian Nationals.

Charged with

COMMITTING A WAR CRIME
in that they

at or near VOLTURARE on or about April 1942, in violation of the laws and usages of war, were concerned in the killing of 3723 Corporal. Robert Alfred SMITH, New Zealand Expeditionary Force, . . . wounding of 22593 Pte Verd^{un} Owen WILKINS, New Zealand Expeditionary Force, escaped Prisoners of War.

PLEA : Both accused ; Not Guilty

The PROSECUTION

1st Witness : Dr Domenico LAMAGNA

Witness was called to the Carabinieri Station at BRACIGLLANO on the evening of 16 April 46, where he saw a dead body and treated a wounded man. The dead man had been killed by a firearm discharged at a range of 6 or 7 metres: there were two large and two small wounds on the forehead, caused by the discharge of small and medium shot from a sporting gun. Witness had made a report after examining the body, a translation of which was read to the court, in which it was stated that the wounds were 4mm in diameter and partly blackened at the edges.

Witness then examined the wounded man who was suffering from multiple gunshot wounds on the palms and inside of both hands : there were no wounds on the back of his hands, and, with the exception of one pellet which failed to penetrate the right forehead, no other wounds on the man's body. The wounds were similar to those which had caused the death of the first man, the shot having been fired from about the same range. In a report made after his examination witness had stated that the wounds were 3mm in diameter.

The Prosecutor handed to the Court the statements of the accused BASILE and PARACUOLLO

BASILE : British soldiers had been seen in the area. The Brigadiere of the Carabinieri Station at BRACIGLLANO ordered BASILE and other civilians to arm themselves, BASILE being ordered to get a sporting gun and some others being issued with rifles. BASILE did not know whether the British were parachutists or escaped P' sW. He then set off in company of another man and, after about three hours, three men were sighted. When at a distance of 15-20 metres they were called upon to halt. They turned round and one man put his hand to his chest : another raised his hands above his head. BASILE fired one shot without taking aim and one of the men fell to the ground, while the other who had raised his hands was wounded in the palms. The Carabinieri then arrived and first aid was administered; on the way back to the Carabinieri Station the man most seriously wounded died. The men were dressed in British uniform and BASILE thought they were parachutists.

PARACUOLLO : in April 42 PARACUOLLO was commander of the Carabinieri Station at BRACIGLLANO. On one day in that month the local inhabitants informed him that three parachutists had been seen in the area. At first he discounted these stories but subsequently got together a party to go out in search of these men : he gave no orders to this party concerning the use of firearms. At the same time, unknown then to PARACUOLLO, a party was formed by a fascist militiaman CAPACCIO, of which BASILE was a member. The two parties met up after about three hours in the area of S. ALTO : PARACUOLLO found that two parachutists had been shot and that one was dying. CAPACCIO told him that BASILE had fired at them.

/to sheet two.....

2nd Witness : Giuseppe SANTANIELLO

Witness, a native of BRACIGLIANO, was, on one afternoon in the middle of April 1942, given a gun by PARACUOLLO and told to go out and apprehend three soldiers : PARACUOLLO's orders were to kill them as soon as found. Witness set off with the CARDAROPOLI brothers and was subsequently joined by BASILE, GRIMALDI and CAPACCIO : all were armed with shotgun except witness, who had a rifle and CAPACCIO who had a pistol. Eventually the three soldiers were located, were ordered to halt and raised their hands in surrender making no effort to resist. BASILE then raised his gun to his shoulder and fired two shots at the soldiers at a range of about 6 metres : one soldier was hit in the forehead and the other in the hands. They were dressed in khaki and, when searched, were found to be unarmed. Subsequently PARACUOLLO arrived on the scene. Witness was given 60 lire by PARACUOLLO at the Carabinieri Barracks on account of the day's work he had lost: BASILE received 200 lire.

The DEFENCE

1st Witness: the accused PARACUOLLO

On the morning of the day in question witness had been told by BASILE Antonio, father of the accused, and another man that three parachutists had been seen in the area of SALTO. He did not take these stories seriously, as there was a general panic in ITALY at that time that parachutists would be dropped. After lunch however three or four persons arrived at the barracks armed with shotguns, saying that three supposed parachutists had been seen throwing something into a well. With three of his men and three or four civilians PARACUOLLO then set off for SALTO: owing to the pace the carabinieri and two of the civilians dropped behind. When PARACUOLLO arrived at the scene of the shooting five or six persons were there: CAPACCIO told him that BASILE had fired.

Cross examined by BASILE's advocate witness stated that when he interrogated BASILE he (BASILE) said that he had become frightened and that his gun had gone off accidentally : BASILE at that time was a mere boy.

Cross examined by the Prosecutor witness stated that he did not see the report of the escape of prisoners from the PW Camp at CAPUA until after the incident. When the patrol set out from the barracks he gave no specific orders. SANTANIELLO's evidence was false in that respect. With respect to the reports which he had made, witness stated that they were true in parts only, in order that he should cut a better figure in the eyes of higher authority: that was the reason why, in his reports, witness had stated that only one patrol was organised, whereas in fact, two were organised independently, one by CAPACCIO and one by himself. Witness never gave orders that the men were to be killed if found.

Questioned by the Court witness stated that he never believed these men were parachutists : he thought they were Italian deserters or Germans. If he had thought they were parachutists he would have organised a much stronger patrol.

2nd Witness: the accused BASILE

Witness was told by some girls he knew that three men had been seen throwing something into a well : he was given a shotgun by BOTTA Giovanni and together with a man named Liugi and others they set off. Witness was told by Liugi to shoot if the men made any suspicious movement. Eventually the party caught up with these men and, seeing one of them move his hands to his chest and pocket, witness became frightened and his gun went off; there were other shots also : witness fired from the hip and not from the shoulder.

Cross examined by the Prosecutor, witness stated that he never received any orders from the Carabinieri, nor did he go to the Carabinieri Station before the incident.

3rd witness CARDAROPOLI Carmine

Witness was told by PARACUOLLO to accompany him to search for and capture some parachutists. Witness and his brother, accompanied by PARACUOLLO and some carabinieri set out : after a time they became separated and witness joined up with another party consisting of SANTANIELLO, BASILE and CAPACCIO. When the shooting incident took place witness heard only two shots.

/to sheet three.....

Cross examined by PARACUOLLO's advocate witness stated that he was not told by PARACUOLLO to kill the men, nor did he hear him say so to anyone else.

Cross examined by the Prosecutor witness stated that PARACUOLLO was the leader of the party but that they became separated on the way. PARACUOLLO's only instructions were to attempt to capture the men.

4th witness CARDAROPOLI Savino

Witness heard two shots fired, one immediately after the other : he saw BASILE fire, he was shaking with fear at the time.

Cross examined by PARACUOLLO's defending advocate and by the Prosecutor witness stated that nothing was said by PARACUOLLO or anyone else about shooting these men.

Other defence witnesses who had been connected with this incident, agreed that they had heard PARACUOLLO give no orders to have the men killed.

Evidence was also adduced of PARACUOLLO's good treatment of internees at a camp at which he commanded the carabinieri detachment.

PARACUOLLO's defending advocate addressed the Court:

PARACUOLLO's action in forming a patrol to capture the suspected parachutists was legitimate. Many witnesses had said that they had heard no orders given by PARACUOLLO to shoot. PARACUOLLO himself did not arrive at the scene of the incident until some time afterwards. BASILE had not relied for his defence on superior orders.

BASILE's advocate addressed the Court

It was submitted that it was not proved that BASILE fired the shot that killed one man and wounded the other, and, even if he did fire, his action was involuntary, due to his fear.

The Prosecutor addressed the Court

In order to secure the conviction of PARACUOLLO it had to be proved that he took some action which led to the killing of one man and the wounding of the other. The Prosecutor submitted that an order had been given by PARACUOLLO which led to the incident. PARACUOLLO's evidence was unreliable and contradictory.

BASILE's defence was one of accident : it had been proved that two shots were fired and that BASILE was the only member of the party in possession of a shotgun : SANTANIELLO's evidence was quite clear that BASILE fired the second shot.

The Court found both accused guilty, PARACUOLLO being sentenced to 20 years imprisonment and BASILE to 15 years imprisonment.

On 23 May 46 Major General CLOWES, GOC No 3 District, confirmed the finding and sentence of the Court but remitted 10 years of the sentence of 20 years imprisonment passed on PARACUOLLO and 7 years of the sentence of 15 years imprisonment passed on BASILE.