

BR. 94

Trial against

Colonel Stefano Orfalo.

Italian Army.

MILITARY COURTS FOR THE TRIAL OF WAR CRIMINALS

D.J.A.G's Case No. 19/830

Name of Accused (including Rank, if any)	Arm or Former Arm of the Service	Age	Date and Place of Trial
Colonel Stefano OROFALO	Italian National		20 th May 1946 : AFRAGOLA
			Convened by
			Commander, 3 District C.M.F.

CHARGES

Charge COMMITTING A WAR CRIME in that he at Camp PG 75 BARI on or about 16 July 1942, in violation of the laws and usages of war was concerned in the killing of Sapper Patrick GROGAN, Royal Engineers, a British prisoner of war.

President and Members of the Court (except Legal Member)	Judge Advocate/Legal Member
Lt-col R. CHARNOCK, OBE, MC Major T.P. O'CONNELL Capt J.H. MORRIS	Pnr Corps Queens. Pnr Corps. - N.A. -

Pleaded	Finding
Not guilty.	Not guilty.

Sentence and Minute of Confirmation

- N.A. -

When and where Promulgated :— - N.A. -

Date of Receipt	To whom sent	Date sent	Purport

Br. 94

GENERAL REPORT OF THE PROCEEDINGS OF A MILITARY COURT
HELD AT AFRAGOLA ON 20 - 21 MAY 46 FOR THE TRIAL OF
Colonel Stefano OROFALO, ITALIAN ARMY.

Charged with

16021/3/A-3

COMMITTING A WAR CRIME
in that he

at Camp P.G.75 BARI, on or about 16 July 42, in violation of the laws and usages of war, was concerned in the killing of Sapper Patrick GROGAN, Royal Engineers, a British Prisoner of War.

PLEA: NOT GUILTY.

PROSECUTION.

The Prosecutor, in his opening address drew the attention of the Court to para 108A of Chapter XXV of MML and to the definition of a War Crime in A.O. 81/45.

The case of the prosecution was that the accused OROFALO, commandant of Camp PG 75 gave an illegal order, as a result of which a sentry shot and killed Spr GROGAN, who was entitled to protection under the laws and usages of war. OROFALO was therefore responsible for GROGAN's death.

WITNESS : Major Germano ARMELLINI.

Witness had been commandant of Camp PG 75 prior to OROFALO's arrival. At the time of the incident he was present at the camp but was occupying no official position. Witness had handed over the camp to Col POLI who in turn had handed over to OROFALO.

On the night of 15/16 July 42 witness heard a shot. He went out and found that a prisoner had been shot.

During the previous day about 2000 prisoners had arrived at the camp and were awaiting disinfection. Straw had been issued for bedding but a considerable quantity was left and was piled in the vicinity of these prisoners. In order to prevent the straw being pilfered or set alight OROFALO had posted a guard over it, with orders to prevent anyone approaching it. Witness had told OROFALO that he did not think it was prudent to post a sentry inside the stockade but he had replied that it was only a temporary arrangement. It appeared that, during the night, the sentry, hearing a noise near the straw, challenged; a prisoner then ran away towards the tents where the other prisoners were accommodated; the sentry then fired, killing him outright.

The Statement of OROFALO was handed to the Court. OROFALO took over command of the Camp on 14/15 July 42 from Col POLI. On taking over he had confirmed the order that Ps W were not allowed to leave their huts at night; those in the tented area could go to the latrine by the shortest route only. In the corner of this tented enclosure on the night in question was a pile of straw over which he had posted a sentry. The sentry's orders were to use his weapon only if he was attacked or if attempts were made to remove the straw by force; his duty was to prevent it being stolen or burnt. Prisoners were told when they entered this enclosure that they were not allowed to wander about at night.

OROFALO interrogated the sentry on the morning after the incident and a series of reports were made, the tenor of these reports being that the act of the sentry was justified, in that the prisoner failed to halt when ordered to do so but instead ran away towards the tents. The prisoner had no reason or right to be in the vicinity of the straw.

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The Statement of CASULLO, the sentry in question, was handed to the Court. CASULLO's orders passed to him by the Corporal Major who had received them from the Camp Commandant through the O.C. Guard Company, were to fire at anyone approaching the straw. While on duty he heard a sound in the straw and saw a man rise out of it; he challenged three times but the man ran away whereupon CASULLO fired, bringing him down. Later he was interrogated and rewarded with a special leave. In December 1942 he appeared before a Military Tribunal but was acquitted because his action did not constitute a crime.

Affidavits of fellow prisoners of the victim GROGAN were produced to the Court. GROGAN was suffering from diarrhoea or dysentery at the time. He, with the other prisoners had arrived in the camp on the day previous to the night of the incident.

ITALIAN Military correspondence, was produced to the Court including a letter signed by OROFALO to HQ BARI Area stating that the orders to the sentry were to prevent anyone approaching the straw and to use his arms against anyone so doing or who failed to halt when ordered to do so. A report made to the Ministry of War stated that investigations had shown that the PW had disobeyed orders by wandering in the Camp area at night, that his behaviour justified the conclusion that he was attempting to escape or commit an act of sabotage and that the sentry who fired acted strictly in accordance with his orders.

The Defence.

Witness: the accused OROFALO

Witness stated that it would not have been possible for a prisoner to lose his way going to the latrine, as it was high and well lighted and close to the tents. He denied that he gave any specific orders for the use of weapons by the sentry. It was necessary for a sentry to be posted over the straw in order to prevent it from being pilfered or burnt; no transport was available to have it removed from the stockade. From the facts, as they appeared, he had considered that that the sentry's action was justified and that he had acted in accordance with his orders and with the normal rules for the conduct of sentries.

Witness denied that ARMELLINI had opposed the posting of this particular sentry. He also denied that CASULLO had been given leave as a reward.

Gen SPREGA, who conducted an investigation of the incident was satisfied that no blame attached to OROFALO but he thought that the sentry acted in excess of his orders, in that he shot at the prisoner when he was running away.

Other Defence witnesses, on the camp staff at the time of the incident, stated that it was common practice to post sentries over straw piles and that the duties of such sentries were of common knowledge, as laid down in general orders for sentries.

A statement by Archbishop RIBESI of the Vatican, was handed to the Court, praising OROFALO's administration of Camp PG 75 and his treatment of PW.

The Defending advocate addressed the Court, pointing out that OROFALO had assumed command of the Camp only on the previous day to that on which the incident took place. The guard was placed on the straw to prevent anyone approaching; anyone who disobeyed the orders of such a sentry laid himself open to be fired upon. In fact GROGAN was shot running away, and not approaching, and thus CASULLO acted in excess of his orders. Thus GROGAN's death was not the result of an order given by OROFALO.

The Prosecutor addressed the Court, pointing out that OROFALO had admitted giving orders that firearms were to be used. There was evidence that OROFALO himself considered that CASULLO acted in accordance with his orders. As to the legality of the order the Prosecutor submitted that it was unlawful in the light of the laws and usages of war. The fact that OROFALO did not know that it was unlawful at the time of the incident was no defence.

The Court found the accused OROFALO NOT GUILTY and he was accordingly discharged.
