Senato della Repubblica

Archivio storico

FONDO : BENTIVEGNA

serie : 1

b. : 3

fasc. : 8

LEGAL

Recd. 29-8-1944

Major Hendrickson

Regional Legal Officer
Region IV

Dear Major Hendrickson.

Lt Col D.H.D. Young has been asked by Brigadier Low for a brief note on the "Bentivenga" case, in which after the accused had been sentenced to 18 months imprisonment, he was released on appeal.

Could you very kindly supply such a note direct to Colonel Young, G-2, RAAC as I understand the Brigadier is anxious to get this through tomorrow, if possible.

J.

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Roberto, questo documento è molto importante perché dimostra la pregiudiziale posizione del Ten. Col. Pollock

ROME INQUIRY
ALLIED CONTROL COMM. BRH
A.F.H.Q. No.394, U.S. ARMY
Police Headquarters

24th June, 1944.

SUBJECT: Murder of Lieutenant of Finance Guards named Giorgio Calandrelli.

TO : Col. C. Pollotti, Rome.

copies to: General Johnson
Colonel Amos
Major Fielden
Major Hendrickson.

OK
convenire
generale corte
C Pollotti

1. About 3 P.M. 5th June, 1944 (the day of our occupation of the City) a police Finance Guard, Lieutenant, was shot dead at Via Tre Canelle, Rome. He was shot in broad daylight through the chest with one bullet, and died almost immediately. There was no clue as to the assailant.

2. Immediate instructions were given to the Questore to proceed with the enquiries in the ordinary way, but I felt the crime was such that immediate investigation was necessary by our Public Safety Division. As you know we had to disarm the overnight partisan police force of 17.000 upwards, and I felt that unless we stamped out this shooting by civilians ruthlessly the position might very soon become out of hand. Moreover, it came to my knowledge from reliable sources that many of the so-called communists and socialists were banding together to wipe up old scores with their fascist and other enemies. In short they were prepared to take the law into their own hands. The same afternoon I saw all the leaders of the various political groups, and warned them in no uncertain terms that we would tolerate no shooting or extreme measures by civilians in this city. They denied that any political parties were involved in the shooting of the Finance Guard, and they were unable to help me in the investigations.

3. I at once withdrew one of my officers from his District of Roma Vecchia, Capt. T. [illegible] GREENHILL (3), who served with me as a detective officer, attached to the Criminal Investigation Branch, New Scotland Yard, London. Knowing his record I felt he was the one man who could handle this murder case. Capt. Greenhill at once took up the enquiries and from 6th June until last night he has been on this case day and night. By a process of elimination he has interviewed well over 200 individuals, dealt with over 100 suspects, and during the last three days narrowed the enquiries down to three or four suspects.

4. By 2 p.m. yesterday, 23rd June, 1944, he had obtained sufficient evidence to arrest one Roberto [illegible], the [illegible] medical student, of Via [illegible] 1[illegible], Rome, an avowed member of the

62

REGION IV CASE Nº 7762

2

Communist Party and self-styled partisan.

5. I was present when Capt. Greenhill handled this individual. Bentivegna was properly cautioned and agreed to make a written statement to Capt. Greenhill. In this written statement to Capt. Greenhill, Bentivegna confessed to the shooting of the Finance Guard, his excuse being that the Finance Guard Lieutenant had attempted to pull down certain wall posters including a poster respecting the "Unita'" newspaper, which is the communist organ. The evidence is clear, the confessions is straight forward, and there is no doubt the evidence will show that Bentivegna shot the Finance Guard in cold blood.

6. In the ordinary way such cases could be tried by the Italian Courts by Italian Judges, but I submit that this case is so serious, the polticial issues involved are so great, that we set up a strong Allied Military Court immediately to deal with this alleged murder. This course, I submit, is highly desirable because of the possibility, in the event of it being tried by an Italian Court, of the influences from political ramifications. Left in our hands, it could not then be said, by opposition parties, that political influence had had any effect upon the result.

7. Capt. Greenhill is having all the statements of witnesses etc. typed out, and will have the case ready for presentation within two days.

8. I strongly recommend that a General Court be set up with General Johnson, Colonel Poletti, and the Senior Civilian Judge of the City to hear the case, that the widest possible publicity be given to the trial so that we can stamp out once and for all such actions of violence on the part of civilians.

9. Fortunately this is the only known case of its kind so we have been very fortunate indeed, but an example must be made at once of this individual if found guilty.

J.R. POLLOCK
Lt. Colonel
Chief, Public Safety,
Rome.

61

3

ALLIED MILITARY GOVERNMENT

HEADQUARTERS
ROME REGION

20th June 1944

TO: :Chief Public Safety Division
FROM :Capt. T.W.M.GREENHILL
SUBJ : Death of Lt of Guardia Finanza

60

4

ALLIED MILITARY GOVERNMENT

HEADQUARTERS

20th June 1944

TO : Chief, Public Safety Division
A.M.G. H.Q.
FROM : Capt. T.W.M.GREENHILL
SUBJECT : Death of Lieutenant of Guardia Finanza
REFERENCE
DATE : 20th June 1944

1. Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia Finanza, 2nd Company, Caserma, via Salaria, Rome.
Home Address : 195, via Salaria, Rome.

2. In consequence, I saw LT.Col. Carlo Perinetti, CC.RR., upon the matter, but he could not assist other than to inform me that the body was at the Guardia Finanza Caserma, via Regina Elena, Rome.
I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 3 p.m., 5th June 1944, at via Tre Cannelle, Rome.
He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Pathologic Anatomy, Rome University, who offered his services, free of Charge. At 2,45 p.m., the same day, Dr.Fontana carried out a post mortem examination of the chest of the dead man.
His report, with translation, is attached giving a wider, informative account of the operation. His deductions shortly are : 59

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A. Death occurred from 48 to 72 hours before the P.M.

B. Death occurred rapidly from acute Anaemia resultant upon the passage of a bullet which passed through the left half of the thorax, with partial injury to the Aorta and the hemothorax, having entered in a region of the Chest corresponding to 1st left intercostal space and passing in a slightly downward direction and leaving the back at the 5th intercostal space on the paravertebral line.

C. Bullet of small calibre, probably not more than 7.m.m.

D. Distance - shot fired - about 1 to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at via Tre Cannelle was then visited. Immediatly an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the Assistence of Vice Brigadiere INSACCANEBBIA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. Although I have yet to trace a witness of the actual shooting, one has come to light who was on the scene soon after the happening. He is Mr. Alberto CASTELLI, via 20th September, 98 E Rome, a Lieutenant in the Italian Navy. He avers that at about 14,30 hours on 5th June 1944, he was standing at the door of via Pilotta 24, Rome, when he heard shots. He went to the corner of via Tre Cannelle, and upon pushing through a crowd of people in the street, he saw the Lieutenant lying across the roadway on his back, obviously lifeless. Near the body he saw a young man, whom he describes, with a revolver in his hand. He asked the man what had happened and he replied: "I killed him in personal defence", Mr.Castelli pressed him for further information, and the man added: " He was tearing down some communist notices. I asked him to stop and he drew his revolver and he tried to take my pistol away. With that a Guardia Danza who was with him fired some shots, so I shot him".

53

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Mr. Castelli says he asked the man who else was present and a girl, whom he describes, standing nearby, replied that she had been. This girl apparently told the same story as the confessed assailant, and drew Mr.Castelli's attention to torn posters on the wall close at hand.

8. Several other witnesses have been interviewed but none can add to the story told by Mr.Castelli, although they could be used to support the latter's evidence.
Neither the Guardia Finanza - alleged to have fired the shots - or the woman have yet been found.
Two interesting points have been disclosed, the finding at the scene of three cartridge cases by Lt.Pietro PASQUA, CC.RR. Ludovisi, and the fact that Barberisi's holster was empty. The revolver, if he had one, has not yet been traced.

9. However, I have succeeded in contacting an informant and he assures me that the assailant was a man, ROSARIO BENTIVEGNA, of via Torino 122, Rome, who left Rome on 7th June 1944 for the Viterbo district with a group of " Italian Patriots " to carry out guerilla warfare in German occupied territory.
Discreet enquiries are in operation, in via Torino district, to bring about the apprehension of the suspect for interrogation, and in any event my informant will advise me should Bentivegna - assuming he is out of Rome- return here.

10. This is an Interim report, and the return of these papers are requested, after passing through Channels, for periodical recording of future developments. Statements, etc., are being retained for translation, etc.

Tom Greenhill

T.W.M. GREENHILL, Capt., C.A.P.O.

In the field.
20.6.44.

Nothing to do
with administration
merely a relation
of police investigation

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File
Secretary Courts
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H.Q. ROME DIVISION A.M.G.

3rd July, 1944.

To: Chief, Public Safety Division, H. . Piazza Venezia.

From: Capt. T.T. W.N. Greenhill.

Subject: Death of a Lieutenant of the Guardia di Finanza by shooting, and arrest of culprit.

1. Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia di Finanza, 2nd Company, Caserma Via Salaria, Rome.
Home Address: 195, Via salaria, Rome.

2. In consequence, I saw LT.COL. Carlo Ferinatti, CC.RR., upon the matter, but he could not assist other than to inform me that the body was at the Guardie di Finanza Caserma, Via Regina Elena, Rome.

I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 8 p.m., 5th June, 1944, at Via Tre Cannelle, Rome.

He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Pathologic Anatomy, Rome University, who offered his services, free of charge.

At 2.45 p.m., the same day, Dr. Fontana carried out a post mortem examination of the chest of the dead man.

His report, with translation, is attached giving a widely informative account of the operation. His deductions shortly are:

a) Death occurred from 48 to 72 hours before the P.M.
b) Death occurred rapadily from acute anaemia resultant upon the passage of a bullet which passed through the left thorax, with partial injury to the Aorta and the hemothorax, having entered in a region of the chest corresponding to the left intercostal space and passing in a slightly downward direction and leaving the body at the 5th intercostal space on the [illegible] vertebral line.

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b) Bullet of small calibre, probably not more than m.m.

c) Distance - shot fired - about ½ to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at Via Fra Cannelle was then visited. Immediately an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the assistance of Vice Brigadiere INSACCAMERIA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. On 23rd June 1944, in consequence of information received, I learned that the assailant was a young man named Rosario BENTIVEGNA of 122 Via Torino, Rome. I instructed Guardia Panetta to effect the detention of this man and bring him to me at this H.Q. Further he was not to make reference to the word "assassinio".

8. At 2.30 p.m. the same day I saw Bentivegna in the office of the Public Safety Division, having been detained at about 1 p.m. in the Via Nazionale by Guardia Panetta.

9. I told the suspect who I was and that I was making enquiries into the death of Lieut. Barbarisi of the Guardia di Finanza, which took place at about 3 p.m. on 5th June 1944, death resulting from a shot in the left side of the chest. I then asked him whether he could help me in the matter. The suspect replied: "Yes Sir, I did it". I then cautioned him and he replied: "I want to tell you all about it". He then made a statement in writing, under caution. The statement is attached.

In short it is a complete admission that he fired three shots directly at the deceased Lieutenant, one of which brought about the death.

He gives as an explanation for his actions that being a communist he saw the Lieutenant in Via Fra Cannelle pulling down posters from the wall, amongst which were posters of the 'Unita' newspaper, a communist organ. He alleges that he remonstrated with the Lieutenant who thereupon was told not to interfere.

He says that the Lieutenant then drew a revolver, charged it with a cartridge and stuck it in his, Bentivegna's body near the heart.

He alleges that he had his right hand in his trouser's pocket holding a loaded Beretta pistol and that at that moment he was in civilian clothes fired the shots. Although they were directed to him although he was not struck. Because of the shots he ran and [illegible] space, drew his revolver from

his trouser pocket and fired three shots at the Lieutenant. He goes so far as to admit that he thought all three bullets struck the officer.

10. He disclosed the name and address of a girl who was with him at the time of the shooting. She is Carla [illegible], aged 24 years, of 1 Foro Traiano. I saw her at this office on 25th June 1944, and obtained a statement, attached, from her. She bears out almost in detail the story told by Bentivegna. I am satisfied, however, that she cannot be cited as an accomplice in the shooting.

11. I also submit statements taken from Anna Romubi, 15 Via Tre Cannelle and Alberto Castelli, 98I Via 20 Settembre. The former woman alleges she was a witness to the shooting, describes the assailant and the woman who was with the latter. Mr. Castelli, who arrived soon after the shooting, apart from describing the scene, as he saw it, outlines the conversation he had on the spot with a young man, who was holding a pistol in his hand and the fact that the young man admitted the killing. He also speaks of the young lady. Having in mind the statements of the accused and his girl friend, the aforementioned two persons provide necessary corroboration in connecting the facts.

12. Bentivenga, who is Italian, and has lived his life, to date, in Rome, alleges that he was unaware that the Lieutenant was an officer of the Guardie di Finanza. It is difficult to believe him as the uniform of a Guardie di Finanza is generally known to the Italian people. The Force has all the powers of a Police Body apart from being an arm of the Italian Military Forces.

13. Three pistol cartridge cases of 9.m.m. guage were found at the scene of the crime by Lieutenant Pietro Pasqua of the Nucleo P.P. Ludovisi, Via Quintino Sella. They bear identical stamp markings at the base.

14. I have been unable, to date, to trace the whereabouts of the dead man's pistol. Bentivegna says he subsequently gave his pistol away to an Australian Lieutenant, who is yet unknown.

15. I am in the process of obtaining statements to give an account of the passage of the body from the scene of the crime to its subsequent interrment.

16. The charge or charges in this case must arise from the Italian Law. I am advised by Commdr Vito Monte Nobile, that

71

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of the General Costura, the son Vitale who is a graduate of law, that there is such an offence as wilful murder, with alternative offences of manslaughter down to assault.

17. As against a plea of self defence, I would draw attention to the fact that nobody alleges, not even the prisoner, that the Lieutenant fired a shot. The prisoner admits that he stepped back a few paces before firing. Not one shot but three shots directly at the officer. I wonder whether it could be said that having stepped back a few paces, his obligation was to run away.

18. Another point in issue is the status of the Lieutenant at the time i.e. a member of the Guardie di Finanza and therefore on duty. This point is not yet clear. One must appreciate the unusual conditions existing on 5th June 1944, which has made the enquiry fraught with difficulties.

However, I am endeavouring to produce evidence showing that he was on duty. Statements will be submitted from time to time as they arise.

19. Respectufully submitted for information of legal department.

T.W.M. Greenhill,
Captain
Public Safety Division,
Rome

In the field,
3.7.44.

Major Hendrickson, Senior Legal Officer
(thro' Col. Poletti)
Referred please

J. Pollock Lt Col.
Rome Regional P.S.O

3/7/44

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[illegible] OF DR. [illegible]

[illegible] HOSPITAL-[illegible]

Dissection Room.

At the request of the Allied Military Government I have today, June 7th, 1944 at 2.45 p.m. made the partial autopsy of the body of Giorgio [illegible]I of whose identity nothing further is known.

Inquiries were made to me by Captain Greenhill of the L.M.O. in regard to:

1) Presumed date of death.
2) Presumed age of deceased.
3) Cause of death.
4) Kind of injuries inflicted and their direction.
5) Type of projectile used.
6) Distance from which shot was fired.

The body of a man of apparently 25 years of age, partially undressed, lies flat on its back on the table of the dissecting room.

On inspecting the corpse green marks of putrefaction are noted on the supra and infra clavicular regions and on the lower regions of the abdomen. There are putrefactive desquamations of large pieces of skin on the limbs and on the back of the body. Rigor mortis has ceased.

On the top part of the left half of the thorax at about 2 centimetres from the sternum, on the 1st intercostal space an oval wound of 8 x 12 mm. with large axis having a perpendicular direction and edges which are clean cut, introflexed, ecchymotic and tattoed for a width of 3 mm. is noted. By testing it with a specillum it is seen that the wound penetrated the thoracic cavity.

On the back, in a position corresponding to the left paravertebral line and the 5th intercostal space there is another oval wound of 1 x 1.5 cm. [illegible] to that are [illegible], ecchymotic, cut-sending and not [illegible]. [illegible] here the specillum confirms that the wound penetrated the thoracic cavity. [illegible] transmitted through the wound [illegible] the body.

69

-pon/

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Upon opening the thorax an abundant quantity of blood (about 2 litres) is revealed, part being liquid and part coagulated in large red clots.

The examination of the passage of the bullet shows that this made a sort of tunnel and that the following parts were affected.

The skin and subcutaneous tissue of the front parts of the thorax- the aponeurosis and left pectoralis majoris muscle, the muscles of the 1st intercostal space, the front part of the left parietal pleura, the upper anterior mediastinum, the arch of the aorta (concave surface) the upper back plarietal pleura, the muscles of the 5th intercostal space, the muscles of the back, the subcutaneous tissue and the skin of the left paravertebral region.

In answer to the queries made, it may be deducted from the above data that:

1) The death occurred from 48 to 72 hours ago.

2) The deceased appears to be 25 years old.

3) Death occurred rapidly owing to acute aneamia caused by a wound inflicted with a firearm with bore through the left half of the thorax with partial injury to the aorta and hemothorax.

The bullet entered in front in a region corresponding to the 1st left intercostal space and following a slightly oblique downard direction came out on a level with the back section of the 5th intercostal space on the paravertebral line.

4) The bullet was of small calibre, probably of not more than 7 mm.

5) The distance from which the shot was fired was of about 1 to 1½ metres.

THE DIRECTOR
Dr. Mario Fontana
of the Institute of Pathologic Anatomy
at the T. University.

68

QUARTIERI GENERALI DEL G.M.A.

IV REGIONE

DIPARTIMENTO LEGALE

16 agosto 1944

Oggetto : Caso Bentivegna Rosario

Per : Ufficio Centrale Avvocati dell'Accusa

Cap. Sam Gilreath

1. Ho qui davanti la decisione ufficiale sulla revisione del suddetto caso.

2. Poiché l'autorità preposta alla revisione ritiene che sia stata pienamente stabilita "la legittima difesa", l'accusato ha diritto ad essere rilasciato immediatamente.

3. Vi allego, quindi, la comunicazione di scarcerazione ufficiale con apposta la mia firma.

4. Vi prego di fare in modo che il prigioniero venga rilasciato senza pubblicità e di adottare quelle misure che vi sembreranno necessarie al fine di prevenire ogni ostentazione pubblica dell'avvenimento sia da parte dell'accusato sia da parte dei suoi seguaci.

Firmato del Magg. Robert C. Hendrickson

Ufficiale Legale Regionale

15

~~RESTRICTED~~

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV LEGAL DIVISION
A.P.O. 394

L/C/1000. 16 August 1944

SUBJECT : Case of Bontivogna Rosario.

TO : Central Prosecutors Office,
Capt. Sam. Gilreath.

1. The formal decision on the review of the above cause is now before me.

2. Since the reviewing authority holds that a "legittima difesa" was completely established, the accused is entitled to be released forthwith.

3. Accordingly I enclose herewith the formal release with my signature appended.

4. Please see that the prisoner is released without any publicity and take such steps as may seem necessary to prevent any public display on the fact of either accused or his followers.

ROBERT C. MIDDLETON
MAJOR J.A.G.D.
REGIONAL LEGAL OFFICER.

RCH/GC

51

Classification changed to Unclassified by Authority of O.S.D. ltr, dated May 3, 1972. Date: 5/24/79.

~~CONFIDENTIAL~~

DECLASSIFIED
Authority JCS ltr, 1/4/74
BY Lewis NARS, Date 5/20/74

16

MOD. No. 12
(riveduto)

FORM. No. 12
(revised)

COMUNICAZIONE DI SCARCERAZIONE AVVENUTA

Al capo delle carceri di Regina Coeli

Oggi, il Bentivegna Rosario,
dalle Competenti Autorità per la Revisione del Processo
è stato messo in libertà ~~dal Tribunale Militare Alleato~~ perchè

+ gli è stato concesso la cauzione
è stato prosciolto
ha pagato la multa inflittagli
è stato giudicato ad una pena condizionale

Data: 16 Agosto 1944

(Presidente del Tribunale Militare Alleato)

TRANSLATION

STATEMENT OF RELEASE FROM PRISON

TO: The Head of the Prison of Regina Coeli

Today Bentivegna Rosario
Reviewing Authority,
has been set free by the ~~Allied Military Court~~ because he has

+ been granted bail
been acquitted
paid the fine imposed on him
been sentenced to a suspended sentence

Dated 16 August, 1944

President of Allied Military Court
ROBERT C. HENDRICKSON
MAJOR A.U.S.
REGIONAL LEGAL OFFICER.

DECLASSIFIED
NND 785024
By NARA, Date

43

Rec'd 15 18/44 X ~~S E C R E T~~ X

LEGAL

AUG 14 1944

L/1017

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.
14 August 1944.

SUBJECT : Case of BENTIVEGNA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV

1. The record in the case of BENTIVEGNA Rosario is returned herewith with decision on review endorsed thereon. Please acknowledge receipt.

2. My decision on review, which is made with the approval of the Acting Chief Commissioner, is that the conviction and sentence are quashed.

3. The reasons for this decision are that in my opinion on the facts as found by the court, the defense of "legittima difesa" was completely established. I am satisfied that on this particular day the mere act by a young, excited Italian of drawing and pointing a pistol is sufficient evidence of an intention of shooting to justify immediate action by the accused in self-defense. Beyond this, there was definite evidence that the deceased "placed a round in the chamber." In these circumstances, where a life and death decision has to be taken in a fraction of a second, it is not in my opinion reasonable to expect the accused to deliberate upon the various courses which the court believed to have been open to him: still less is it reasonable to say that the method of defense which he did adopt was not "proporzionata all'offesa."

Richard H. Wilmer
RICHARD H. WILMER,
Colonel, CAC,
Acting Chief Legal Officer.

DECLASSIFIED
Authority: JCS 1/4/74 ltr.
By: Lewis, NARS. Date: 5/24/74.

~~S E C R E T~~

48

18

Legal

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1030 8 August 1944.

SUBJECT : Decision of Court in case of BENTIVEGNA ROSARIO.

TO : "Corriere Giudiziario"
Avv. Lombardi,
Via Montebello N/22.

1. In accordance with your request, I am forwarding herewith the decision of the Court in the famous trial of BENTIVEGNA ROSARIO.

2. I will be only too happy to supplement, at your request, any further information in regard to the case.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

19

Decisione

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata né dall'uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applidazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 93

REGION IV CASE N° 7762

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20

La Corte è convinta che l'imputato,vedendo il deceduto strappare i manifesti,gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato,in seguito a ciò,senza aspettare,tirò fuori ~~xxxxxxxxxx~~ a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte,questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui,senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo ~~In considerazione di ciò~~,la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una"offesa ingiusta"secondo l'art.52 del Codice Penale. Posto ciò,la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colpevolmente i limiti della difesa proporzionata all' ~~XXX~~ offesa. Come ha detto il Pubblico Ministero, l'imputato,quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione,senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che sieno state scambiate parole dalle quali risulti che il decedato aveva una tale intenzione.In ogni caso,è chiaro che l'imputato aveva a sua disposizione altre vie,oltre a quella estrema da lui scelta.

In tali circostanze,la Corte decide:

1) che la difesa,basata sull'art. 52 del Codice Penale,non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore come contemplato ~~xxxxxxxx~~

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dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e~~x~~ il reato è punibile secondo l'art.589.
Alla conclusione delle prove,il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti,come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente ~~xxxxx~~ prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove,la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto,è stato ~~xxxxxxxxxxx~~ fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio ~~xxxxxxxxxxxxxxxxx~~ nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate,la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè;art.575 e 61 N° 10 del C.P.I.) ma del minore reato contemplato nell'art.55,punibile in relazione all'art.589,col beneficio dell'art. 62,N°2).
Se la difesa desidera che,prima di emettere la sentenza,la Cortedebba prendere in considerazione altre circostanze attenuenti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate,la Corte è pronta ad ascoltare tali argomenti. Ma,prima di udire tali argomenti della difesa,la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne. dell'imputato.

D e c i s i o n :

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata nè dall'uno nè dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati originarono i fatti increscioso che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.
La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionev ole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato abbia ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applicazione dell'art. 52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciare guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentament in considerazione. Come è già stata messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto.

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ed ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 Giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era illegale e costituiva una "difesa legittima" secondo l'art.52 del Codice Penale. Tutto ciò, la Corte

23

è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colpevolmente i limiti della proporzionata all'offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estraesse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.
In tale circostanza, la Corte decide :

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore, come contemplato dall'ultimo paragrafo dell'art 59.

Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art. 589.
Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti, come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostanze attenuanti previste dall'art 62 del Codice Penale Italiano.

In base alle prove, la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art 62, comma 2. In relazione a detto punto, è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie Italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art. 62 comma 2 ; ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato. Per le ragioni summenzionate, la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè,-art.575 e 61 N.10 del C.P.I.) ma del minore reato contemplato nell'art.55, punibile in relazione all'art.589, col beneficio dell'art. 62, N.2.

Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti o se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate, la Corte

è pronta ad accettare tali argomenti. Tu, prima di udire tali argomenti della difesa, la Corte deve chiedere al Pubblico Ministero se sia da produrre prove di precedenti condanne dell'imputato.

DECLASSIFIED
NND 785024
By NARA, Date

44

Legal

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1030 8 August 1944.

SUBJECT : Decision of Court in case of BENTIVEGNA ROSARIO.

TO : "Corriere Giudiziario"
Avv. Lombardi,
Via Montebello N/22.

1. In accordance with your request, I am forwarding herewith the decision of the Court in the famous trial of BENTIVEGNA ROSARIO.

2. I will be only too happy to supplement, at your request, any further information in regard to the case.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

46

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26

DECLASSIFIED NND 785074 By NARA, Date

Decision.

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata nè dall'uno nè dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.
La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionev ole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato abbia ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applicazione dell'art. 52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciare guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentament in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto.

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ed ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 Giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una "offesa in giusta" seconda l'art.52 del Codice Penale. Posto ciò, la Corte

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NND 785014
By [illegible] NARA, Date

è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colposamente i limiti della proporzionata all'offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.
In tale circostanza, la Corte decide :

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore, come contemplato dall'ultimo paragrafo dell'art 59.

Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art. 589.
Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti, come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostanze attenuanti previste dall'art 62 del Codice Penale Italiano.

In base alle prove, la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art 62, comma 2. In relazione a detto punto, è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie Italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art. 62 comma 2 ; ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato. Per le ragioni summenzionate, la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè,-art.575 e 61 N.10 del C.P.I.) ma del minore reato contemplato nell'art.55, punibile in relazione all'art.589, col benificio dell'art. 62, N.2.

145

Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate, la Corte

DECLASSIFIED
NND 785014
By [illegible] NARA, Date

è pronta ad ascoltare tali argomenti. Ma, prima di udire tali argomenti della difesa, la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'imputato.

Decisione

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata né dall'uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applicazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 93

REGION IV CASE Nº 7762

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La Corte è convinta che l'imputato,vedendo il deceduto strappare i manifesti,gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato,in seguito a ciò,senza aspettare,tirò fuori ~~xxxxxxxxxx~~ a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte,questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui,senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo ~~In considerazione di ciò~~,la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una"offesa ingiusta"secondo l'art.52 del Codice Penale. Posto ciò,la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette ampiamente i limiti della difesa proporzionata all' ~~XXX~~ offesa. Come ha detto il Pubblico Ministero, l'imputato,quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione,senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione.In ogni caso,è chiaro che l'imputato aveva a sua disposizione altre vie,oltre a quella estrema da lui scelta.

In tali circostanze,la Corte decide:

1) che la difesa,basata sull'art. 52 del Codice Penale,non è stata completamente dimostrata. 98

2) che l'imputato non ha agito sotto qualsiasi errore come contemplato ~~xxxxxxxx~~

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dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art.589.
Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti, come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove, la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto, è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate, la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè; art.575 e 61 N° 10 del C.P.I.) ma del minore reato contemplato nell'art.55, punibile in relazione all'art.589, col beneficio dell'art. 62, N° 2).
Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate, la Corte è pronta ad ascoltare tali argomenti. Ma, prima di udire tali argomenti della difesa, la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne. dell'imputato.

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NND 785024
By NARA, Date

48

File Rit. 1029

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.
5 August 1944.

SUBJECT : Petition for Review - BENTIVEGNA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV.

1. I return herewith the Petition for Review in the above case and the Remarks of the Court. You will notice that I have written a note on the two last sentences - sentences which affect neither the verdict nor the sentence of the court.

2. No doubt, you will submit the record for review in due course.

I. Campbell LTCR
I.G.H. CAMPBELL,
Lt. Col.,
Chief Judicial Officer,
for Acting Chief Legal Officer.

Encl.

REGION IV CASE N° 7762 43

DECLASSIFIED
NND 785014
By ... NARA, Date ...

49

~~RESTRICTED.~~

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

L/1007 1 AUGUST 1944.

SUBJECT : Bill for service in BENTIVEGNA case.

TO : Avv. Ruggero di Segni.

1. The bill enclosed in your letter is entirely in order, however it is essential that it be submitted in triplicate to meet our procedural requirements, before it can be approved by the appropriate authorities.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

ENCLOSURES:

Letter from Avv. R. Di Segni to Legal Division dated 27/7/44,
Bill from Avv. R. Di Segni , dated 27/7/44 for Lit.4.000,= Re. Bentivegna case.

42

REGION IV CASE No. 7762

DECLASSIFIED
Authority: JCS 1/4/74 ltr.
By: Lewis, NARS. Date: 5/24/74.

34

DECLASSIFIED
Authority NND 785074
By NARA, Date

50

JUL 28 1944

AVV. RUGGERO DI SE^NI
ROMA - LUNGOTEVERE ALTO
TELEF. 560-809

Legal

1007

Rome, Jr : 27, 1944

To: Major Hendrickson
Legal Division
Rome Region

Dear Sir,

I enclose herewith the bill regarding the case of Benti= vegna.

I have changed the figure we spoke about, thinking the importance of the case and the responsability would justify it. But will you please decide as you think better.

I thank you,

yours

41

AUG 4 1944

Rec'd Aug 4/44

Legal

AVV. RUGGERO DI SE^NI
ROMA - LUNGOTEVERE ALTO
TELEF. 560-809

August 1944

1007

To : A.M.G.

ROME REGION

LEGAL DIVISION

I enclose the new copies of my bill regarding the Bentivegna case, as requested with your letter dated I August 1944.

I return also the previous letter and bill.

Enclosures:
I) Letter and bill dated 27 July 1944.
2) Two copies of the bill.

40

35

DECLASSIFIED
NND 785074
By NARA, Date

51

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A.M.G.Superior Cou· Rome Area
Palazzo di Giustiz..a,Rome

Sily
RHH.
1003

Rome ,July 8th 1944

Major Robert C. Hendrickson
C.M.P.,
Regional Legal Officer,
Roma

SUBJECT: A.M.G.v. BENTIVEGNA ROSARIO di VINCENZO

1. Confirming conversation with Capt.Gazziano the Prosecution is now prepared to proceed with the case on Wednesday July 12th 1944.
2. May arrangements now be made for a Court.
3. Copy charge sheet served on the accused is enclosed herewith.

Howell Jones Capt.
Howell Jones Capt.
Superior Court Prosecuter

Enclosure: Copy charge sheet

39

36

DECLASSIFIED
NND 785034
By NARA, Date

52

Form. No. 4

ALLIED MILITARY GOVERNMENT
(GOVERNO MILITARE ALLEATO)

CHARGE SHEET
(FOGLIO D'ACCUSA)

Place (luogo): Rome

Date (data): 8 July 1944

BENTIVEGNA Rosario di Vincenzo
Name of defendant (nome dell'accusato)

Via Torino 122, Roma
Address (indirizzo)

is hereby charged with the following offenses:
(E' qui accusato delle offese seguenti)

First charge: Responsible of the offence contemplated by Art. 575-61 N°10 Penal Code (Italian Law)

Particulars: For having killed in Rome, on June 5th, 1944, by three shots of pistol the Lieutenant Guardia di Finanza Giorgio Barbarisi.

Second charge

Particulars

TRADUZIONE

Prima accusa: Colpevole del reato di cui agli Art. 575 - 61 N.10 del Codice Penale Italiano

Dettagli: Per avere in Roma, il giorno 5 giugno 1944, ucciso con tre colpi di arma da fuoco il Sottotenente della Guardia di Finanza Giorgio Barbarisi.

Seconda accusa

Dettagli

(Se non tradotto dall' ufficiale, voi dovete farvelo tradurre da un amico o presso qualsiasi Ufficio di Questura).

The above charges are referred for trial before an A.M.G. GENERAL COURT, Palazzo di Giustizia, Rome, on 12 July 1944, at 0930 hours.
(name and address of Court)

(Le suddette accuse sono riferite a processo davanti alla CORTE GENERALE del G.M.A., Palazzo di Giustizia, Roma, il giorno 12 luglio 1944, alle ore 9,30.)

By order
(Per ordine)

Thomas Cafer

Judge, Summary Military Court or other authorized person.
(Giudice, Tribunale Militare inferiore o altro individuo autorizzato).

FOR RIGHTS OF DEFENDANT SEE REVERSE SIDE OF THIS SHEET.

37

DECLASSIFIED NND 785024 By NARA, Date

Decisione

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata né dall'uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applidazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 93

REGION IV CASE N° 7762

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DECLASSIFIED NND 785084 By NARA, Date

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo ~~In considerazione di ciò~~, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una "offesa ingiusta" secondo l'art. 52 del Codice Penale. Posto ciò, la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colpevolmente i limiti della difesa proporzionata all' offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.

In tali circostanze, la Corte decide:

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

98

2) che l'imputato non ha agito sotto qualsiasi errore come contemplato

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DECLASSIFIED NND 785024 By NARA Date

dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art.589.
Alla conclusione delle prove,il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti,come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove,la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto,è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate,la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè;art.575 e 61 n° 10 del C.P.I.) ma del minore reato contemplato nell'art.55,punibile in relazione all'art.589,col beneficio dell'art. 62 n° 2).
Se la difesa desidera che,prima di emettere la sentenza,la Cortedebba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate,la Corte è pronta ad ascoltare tali argomenti. Ma,prima di udire tali argomenti della difesa,la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne. dell'imputato.

DECLASSIFIED
NND 785024
By NARA, Date

2274 117

Form No. 8

ALLIED MILITARY GOVERNMENT

PROCEEDINGS OF AN ALLIED MILITARY COURT

Held at The ex Governatorato of Rome.

on the 14th day of July 194 4. and succeeding days.

Before Col. H.G. Willmer. Pres. } Constituting a General Military Court.
Lt Col. J Jan Campbell. Member
Maj. R.C. Henderickson Member.
(Name and rank of President and/ or Magistrate constituting the Court).

REFERENCE No. Avvocato Di Segni Ruggero sat with the Court as an Assessor.

ACCUSED

Name: Beintivegna Roberto di Vincenzo

Address: Via Torino 122. Roma.

Description: Single

Occupation: Medical Student

Age: 22

INTERPRETER

Name Cpl. Hugo Tellona. is duly sworn

PROSECUTING OFFICER

Name: 2nd Lt. L. A Sabatino.

ADVOCATE FOR ACCUSED

Name and Address Avv. Corrado Perris
Avv. Adelmo Niccolaj
Avv. Giulio Bunti D'Arezzo.

CHARGE (S) 164

(This space need not be completed if a copy of the Summons or charge sheet is attached).

Charge Sheet attached.

REGION IV CASE No 7762

41

DECLASSIFIED
Authority NND 785024
By NARA, Date

1. The evidence, any statements by the prosecution and defence before sentence, and any opinion the Court wishes to record as to its findings will be written or typed on this and the following page. When the length of the evidence requires, further sheets of paper serially numbered will be inserted in this file.

2. This record will be signed by the President and members of the Court.

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14 July 1944.

The Court assembled at 0955 hours.

The Convening Order was read.

The Interpreter was sworn.

The Accused for the Defence are granted leave of absence in this Court.

In answer to question by the Court Lt. Sabatino submits that a long term of imprisonment would be the maximum sentence.

Accused is arraigned, and pleads "not guilty".

Adv. Corrado objects to the jurisdiction, and applies that the case be heard by an Italian Court. Allied Proclamations had not yet gone into effect at the time of the alleged offence.

Court rules that case must proceed, with liberty to Defence to renew this application at any stage, if on the evidence it appears that there are good grounds for transfer to an Italian Court.

Lieut. Sabatino

Prosecution will show that deceased was a member of Guardia di Finanza, and that he was working for the Allies when shot. He wore distinguishing marks on his clothing to show he was working under Allied authority. Deceased attempted to remove certain posters that had been affixed to the walls in this city. Accused became disturbed that deceased was attempting to remove posters. Accused asked him what he was doing. Deceased wanted to know who accused was and why he asked the question. Accused without explanation opened fire and inflicted fatal injuries on deceased. The homicide was unlawful and without justification.

DECLASSIFIED
NND 785024
By NARA, Date

119

Rec'd July 13'44

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

SUBJECT : Order convening General Military Court.

In pursuance of the power conferred upon me by the appointment dated 1st. July 1944

I hereby DIRECT that the General Military Court shall meet at the Palace of Justice at 0930 hours on Friday the 14 day of July 1944 and such other days as may be necessary for the trial of the offences brought before it AND that the composition of the Court (in compliance with such order) shall be as follows:

Col. H. G. WILLMER	President
Lt. Col. IAN CAMPBELL	Member
Major ROBERT C. HENDRICKSON	Member

Dated 12 July 1944

Charles Poletti
CHARLES POLETTI
Col. A.U.S.
Regional Commissioner.

163

43

120

CASELLARIO GIUDIZIARIO

PROCURA DEL RE IMPERATORE DI ROMA

CERTIFICATO GENERALE

Al nome di Bonfiglio Mario

figlio fu Vincenzo di o fu

nato il in

Circondario o Stato di

Sulla richiesta della Corte Generale Militare

per motivo di ufficio

si attesta che in questo Casellario Giudiziale risulta:

NULLA

ROMA LI 12. LUG. 1944

IL SEGRETARIO

162

Stamperia Reale di Roma (365-s)

DECLASSIFIED NARA

44

DECLASSIFIED
NND 785001
By NARA, Date

Verbale per l'uccisione di un sottotenente avvenuta il 5/6/44 alle ore 14,30 in Via Tre Cannelle.

Io sottoscritto Sergente Maggiore Alessandro Virgilio di Cesare e di Giovanna Aurelia nato a Roma [illegible] 22/2/910 arruolato nella forza di polizia con terza fascia n. [illegible] del fuoco, affermo quanto segue.
Fermo in Via IV novembre angolo Via Tre Cannelle voltando le spalle alla detta via, udii alternate raffiche di mitra e vidi un [redacted] vestito alla fascista che mi voltava le spalle puntare il braccio su una moto ferma, sparare e far fuoco tre o quattro volte. Il militare che fu risultato essere un sottotenente cadde in terra. Allora mi avvicinai e lo spogliai e trovato sprovvisto di documenti, affermo di chiamarsi Bentivegna Rosario fu Vincenzo e di De Simone Valentina abitante in Via Torino 122 nato il 22/6/922.
Il Bentivegna aveva in tasca una bombetta corta e nera.
Al mio sensante per l'atto il Bentivegna [redacted] portando forza del P.C.I. n. 6577 in servizio presso il Giornale dell'Unità (vecchio Lavoro Fascista in Via IV novembre) affermava di aver sorpreso il sottotenente nell'atto di strappare i fogli murali del Giornale dell'Unità e vedendolo si era fermato la rivoltella e per difesa di detto fatto

161

DECLASSIFIED
NND 785047
By ... Date ...

di aver fatto informare immediatamente della Questura del fatto era la Sig.ina Cappani Carla fu [illegible] e di Tamburini Maria nata a Roma il 7/12/1920 abitante in Foro Traiano 1, [illegible] in Lungotevere [illegible] e [illegible] presso la G.I.L. [illegible] nella redazione del detto giornale [illegible] fece parente il condurre nella guardia del giornale P.i. Terenzi Americo di Giuseppe e di [illegible] nata a Roma il 17/4/909 abitante in Via Foglia [illegible]

Note: nella angusta [illegible] del sottotenente caduto non si rinvenne da me nessun pistola. La Sig.ina Cappani Carla afferma di aver veduto il sottotenente fumare [illegible] e [illegible] fogli [illegible] suddetti.

Dovendo io allontanare immediatamente per servizio il corpo del sottotenente [illegible] mi fu ordinato dal P.i. Terenzi Americo, [illegible] tolto dalla strada dagli uomini del corpo di guardia del giornale. In fede di quanto sopra

Sup. Magg. Alessandri Virgilio

123

COMMISSARIATO P. S.
MASSANAPOLI

Roma,li 15.6.944

N. 01000.Gab.
Risp. a N.°

OGGETTO FONOGRAMMA INTERNO

AL COMANDO ALLEATO =DIV.DI P.S.
Comando Zona di Roma Tel 67324
e.p.c.,ALLA R.QUESTURA
R O M A

In seguito alll'annuncio pubblicato suo quotidiani locali relativo alla uccisione di un Tenente di finanza avvenuto il 5 giugno 944 in via delle Tre Cannelle si è spontaneamente presentato in questo Ufficio il Sig.Alessandri Virgilio di Cesare e di Giovannini Aurelia,nato a Roma il 22.2.910,abit'in via dei Pastini 133,il quale ha dichiarato di essere stato presente alla scena e di poter dare esaurienti ragguagli per il rintraccio dell'uccisore che egli assume essere tal BENTIVEGNA Rosario.
Faccio accompagnare questo codesto Comando l'Allessandri per gli ulteriori incombenti.

IL COMMISSARIO CAPO DI P.S.
(F.Cacace)

DECLASSIFIED NARA

DECLASSIFIED NND 785024

Report for the killing of a sub-Lieutenant happened on the 5th Juin 1944 at 14.30 hours in Via Tre Cannelle.

I undersigned Sergeant Major Allesandri Virgilio, son of Cesare and Giovannini Amelia, born in Roma on 22nd Febr. 1910, member of the Police Forces with card and band N°12719 of the Group Menotti, state the following:

Standing in Via IV Novembre at the corner with Via Tre Cannelle, turning my shoulders to the mentioned street, I heard to quarrel, I turned round and saw a gray dressed man, who was turning his back to me, to point his arm to a military man without jacket and fire three or four times. The military man who later resulted to be a sub-Lieutenant fell immediately on his back. The man who shooted was stopped, he had no documents, he said his name was Bentivegna Rosario, son of Vincenzo (dead) and De Somma Valentina living at Via Torino 122, born on 22nd Juin 1922. The Bentivegna is a lithe man with a short and black smal beard. On his defence for the action, the Bentivegna, who wore a band of the P.C.I. (Italian Communist Party) N°6577 on duty at the newspaper L'Unità (previous "Lavoro Fascista" at Via IV Novembre), says of having surprised the sub-Lieutenant in the act of tearing the wall sheets of the newspaper L'Unità and having rebuked him he saw to point the pistol to him and for defence he fired immediately. A witness of the incident was Miss Capponi Carla, son of Giuseppe (dead) and Tamburri Maria, born in Rome on 7 Dec. 1920, living at Foro Traiano 1, she also armed with a pistol. Also this young lady was without documents and a meber of the P.C.I., on guard of the newspaper L'Unità. They were leaded by me to the editorship of the above mentioned newspaper for their identification, and the Commander of the Guard of the Newspaper Mr. Terenzi Amerigo son of Giuseppe and Olimpia Gori, born in Roma on 17 Apr. 1909, living at Via Fogliano 15, guarantied for them.

NOTES : In the hand and the proximity of the fallen sub-Lieutenant no pistol was found by me. Miss Capponi Carla states of having seen the sub-Lieutenant to point the arm to Bentivegna and that he was rebuked because he was tearing the above mentioned wall sheets.

As I had to go away immediately because of my duty, I was told by Mr. Terenzi Amerigo that the body of the sub-Lieutenant would be removed from the street by the men of the guard of the newspaper.

By truth of what above said
Signed: Serg. Magg. Alessandri Virgilio.

- - - - - - - - - - - -

Commissariato P.S.
Magnanapoli
N.01000Gab.
Object: Internal Phonogramm

Rome 23 Juin 1944

To The Allied Command = P.S. Division
Command Rome Area =
and for knowledge to the R. Questura
R O M A

Following the notices printed in the newspaper concerning the killing of a sub-Lieutenant of the Finance Guard happened on the 5 Juin 1944 in Via Tre Cannelle, Mr. Alessandri Virgilio son of Cesare and Giovannini Aurelia, born in Rome on 22 Febr. 1910, living at Via dei Pastini 133, has willingly come to this Office and stated to have been present to the scene and to be able to give sufficient information for finding the killer whom he says to be Bentivegna Rosario.

I let accompany the Alessandri to this Office for the further proceeding.

The Chief Commissary of P.S.
F. Cacace.

DECLASSIFIED
NND 785037
By ... NARA, Date ...

Notes by Avv. Di Segni, Assessor

CASE OF BENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by th-e article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indi= cated by the art. 576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indica= ted by the articles 6I and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art. 6I N°IO : having committed the act against ~~the~~ a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administra= tive or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service.

If the answers are negative, the aggravating circumstance of the

DECLASSIFIED
NND 785014
By NARA, Date

art.6I N°IO does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES. The extenuating circumstances which, hypothetically, might be concerned in this case are the following :

A) Art.62 N°1 : having acted for motives which have a special moral or social value.

B) Art.62 N°2 : having reacted when in a state of anger, caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury. It is also required the necessity of the defence, so that the danger or the damage could non be avoided unless with the defence. Besides that, the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the necessity, it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imprisonment not inferior to 2I years (Art.575).

If there is an aggravating circumstance, the punishment which would be imposed for the committed crime is increased as far as a third. In no case, the period of imprisonment can exceed 30 years (Art.64).

If there is an extenuating circumstance the punishment is diminished of a period not exceeding a third (Art.65). Existing more than one extenuating circumstance, the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum=

DECLASSIFIED
NND 785024
By NARA, Date

stances ,the Judges decide if are prevailing the one or the others, and will consider only the prevailing ones.They can also consider them equivalent,so that no augment or diminution will took place. (art. 69).

DECLASSIFIED
NND 785074
By NARA, Date

Evidence for the Prosecution

First Witness (Sworn)

Lieut. Filippi Silvestro, officer of the Guardia di Finanza. About 1.0 p.m. on 5 June I was at our officer's mess, in via Regina Elena, Rome. Some other officers were with me. I remember 2/Lt. Lebne was there, also 2/Lt. Iannotta, also Lieut. Icalzi. There were others, but I don't remember who. 2/Lieut. Barbarisi was also there. I had known him since October 1943. He was in uniform, without a blouse; he had on his belt, and a white band on his arm with words in English written on it – except that I saw "A.M.G." on it. I spoke with 2/Lt. Barbarisi. I saw him again that afternoon. About 1600 hours I was on duty when I was informed by a maresciallo that a 2/Lieut. had been killed. At 1630 I saw Barbarisi in Via Tre Cannelle. He was lying on the ground dead and covered with a blanket. My colleagues had examined the dead. I did not remove the cover myself. I never saw his face. When they came for the body to take it away, I recognized who it was by the uniform and by the colour of his hair.

No xxtion

155

Second Witness (Sworn)

Fontana Mario Luigi, Assistant at the Pathological Institute. I am a qualified medical practitioner. I saw the body the day I was authorised by Lieut. Greenfield to carry out an autopsy. I was told it was the body of Lt. Barbarisi. It was a man of 25-26 years old. It was the attendants who told me who it was, and also the Captain, I believe. I carried out an autopsy. Death had taken place about 48 hours before. The autopsy was on 7 June about 1500 hours. Death was caused by acute anaemia caused by a bullet which penetrated on the top part of the left lung

52

DECLASSIFIED
Authority NND 785024
By NARA, Date

of the thorax at about 2 cm. from the sternum; on the first intercostal space, there was an oval wound of 8 x 12 mm., on the left side. Death was caused by the bullet, which perforated the aorta, causing loss of about 3 litres of blood. Death must have been very rapid, because of heavy internal haemorrhage, within about 15 minutes. After a maximum of 5 minutes he would lose consciousness, because of the brain not being fed with blood. The shot must have been fired at a short distance. This is shown by the fact that it caused a large wound, and by the distance the bullet travelled in the body. The range must have been ½ to 1 metre.

XXd

I found one bullet only. I should say that the bullet came from slightly above, and obliquely, from front to rear. The inclination may be due to the fact that the bullet struck a bone in the thorax. The body was partially undressed, the upper part wholly. The autopsy was limited to the thorax and the abdomen, because when I found these fully explained the cause of death. We stopped the body completely upon examination.

No Re-xn.

~~Cross~~

By the Court

I did not find a bullet – the bullet had passed right through the body. I merely found a hole. I found no other wounds in the body at all.

Re-xd (with leave)

There was a wound of entrance, and a wound of exit.

(Adjourned 1200 – 1330 hours).

DECLASSIFIED
NND 785084
By NARA, Date

Third Witness. (Sworn)

Lieut. Tamaddeo Aldo, of the Guardia Finanza. About 1.0 p.m. on 5 June I was at the officers' mess in Via Regina Elena, Rome. Lt. Filippi, Lt. Calzi and Lt. Barbarisi were with me. I saw Barbarisi again that afternoon. He was dead. I saw him about 1615 hours in Via Tre Cannelle. His body was on the ground. I saw his face and recognized it as that of Lt. Barbarisi. The body was covered by a blanket – I removed the blanket, saw the body was rigid, and to all appearances he was dead. I had talked to Lt. Barbarisi that afternoon. When I saw his body in the street, he had boots, trousers, shirt, belt and a band on his left sleeve. He had the band on in mess at 1.0 o'clock. I was able to read some words – "Civil Police" – I am not certain. He had the same band when I saw him dead.

XXd

He did not wear a blouse in mess. He had no blouse when I saw the body. I don't remember whether he was carrying a blouse over his arm in mess. The blouse must have been there near the body, because when they removed the body one of those present picked up a blouse. When I saw him in mess he had his shirt sleeves rolled up. When I saw the body, the shirt sleeves were still rolled up. The white band was on the upper part of the arm, and the sleeve was rolled up to the elbow. He brought Lieut. Barbarisi to the station, and with a colleague I made an inventory of that which belonged to the deceased. The list has been given, together with the articles, to the authorities of our organization, and I believe that everything was then handed over to the deceased's mother. I heard that letter from deceased's mother. I don't know for certain if all the articles and letters have been returned to her. You can find out from the Carabinieri who took

DECLASSIFIED
NND 785024
By NARA, Date

delivery, or from the Accused's mother. There was not a hand in the sleeve of Lt. Barbisi's House. I examined the House in the hospital where we took the body, and I looked in the pockets. If there were hand in the sleeve I should have noticed it. There were other words besides "Civil Police", but I don't remember what. When I saw Lt. Barbisi he was wearing his belt and holster, but I did not notice whether there was a pistol in the holster. I believe that the body was buried with the shirt; I heard that his mother was looking for his handker and pocketed it in the pocket of the shirt.

No Question

Fourth Witness (Sworn)

Castelli Alberto, commander of the Patriot's Group. I live at Via XX Settembre 98. About 2.30 p.m. on 5 June I was in front of the door of my H.Q. in Via Pilotta. A civilian passed me (I think it was a civilian), who said "They have killed a Finance Guard". I called two of my men and said "Let's go out to see what has happened." I went to Via Tre Cannelli. Before arriving I saw an assembly of people standing around. I advanced with my men and asked the crowd away, and made my way through. I saw the accused there. I was coming from Via IV Novembre and accused was standing away from me – the body between us. When I arrived there was confusion. I don't remember exactly how accused was dressed. He had a pistol in his hand. I asked him first "What has happened?" I asked "What has happened, who has killed?" The accused answered "I have killed". I don't know the accused's name – I spoke of the accused as I recognised him to-day as the man I spoke to. I also asked the accused "Why?" He replied "Per Legittima Difesa."

55

DECLASSIFIED
NND 785084
By NARA, Date

I asked him to give me the pistol. I refused, because he said he had acted in self defence. He said he had acted for self-defence, because the Lieutenant had drawn his pistol. He told me when the deceased had taken out his pistol, there was another civilian there who would have fired. He told me he told the lieutenant to stop taking down certain notices. The posters which the lieutenant was trying to take down are in glass boxes in Via Tre Cannelli: they are glass cases, but the glass is missing. I don't remember what was on the posters that seemed shocking. There was with the accused a girl who, the defendant said, could testify in his favour. I saw the Lieutenant's body on the ground. I don't think I knew him. I noticed how he was dressed. He was not wearing his blouse — it was thrown on his shoulders, as if he had taken it off in haste. I noticed on the left sleeve of his shirt a band with some lettering in indelible ink on it. I did not read what the band said — but I have since seen others like it. I did see part of the band which said "Police". The accused did not say how many times he had fired — I did not see him. When I arrived there was with the accused, besides the girl, a third man with the Patriot's Excelsior armband. I asked him what he was doing, and he said "I am waiting for my captain, whom I have sent for". I said "Yes, we will wait", as I did not wish to go ahead with searching the body before the arrival of another officer. As the deceased lay on the ground, his arm band was partly covered. I did not see his sleeves were rolled up. But he had a blouse which he was carrying which covered part of his body. Only a small piece of the armband could be seen. The rest was obscured partly by the blouse, and partly by the position of the arm.

DECLASSIFIED
NND 785047
By NARA, Date

xxd

I do not remember if the accused said anything else. I do not believe he said anything else. He had already said "I killed him", and I thought my task was complete, as the Captain had been already informed. Accused did not say he was a "Volontario della Libertà", but I said that he was by his armband. I believe it was a red band, with the letters VL. I was not too interested in these particulars — what interested me was that he should remain there. I did not recognise him as a Volontario della Libertà, so I simply asked him for the documents to prove that he had the right to wear a band. He had no documents, nor did the young girl with him.

No Question.

By the Court

I believe the posters were in Italian, but I am not sure, because I did not observe them. Rome was full of posters and I did not look at them closely.

Fifth Witness (Sworn)

Signora Rosetti Anna, Via Tè Cennelli 15. I am a doorkeeper. On afternoon of 5 June I was in my kitchen, when I heard a commotion. I went to the door of my house. I saw 2 young men talking. I could not understand what they said. As I watched I heard a shot, and one of the two fell to the ground. I did not understand, as I was excited, being a hunchback, and I thought my son might be there. I got excited as soon as I saw the boy fall to the ground. I did not understand, because they were a bit distant, and I could not hear well. I did not recognise who it was. One of the men was military — the other I cannot swear.

DECLASSIFIED
NND 785024
By NARA, Date

The man who was shot was the military man. I didn't see what he did before he was shot. I was inside, it came on only when the thing happened. I was in my kitchen when I heard the shot. I heard only the one shot. Afterwards I saw nothing, because I felt bad, and they asked me to close the door of my house. A young girl told me, but I would not recognize her. I was at the door when I heard the two men talking. I was still in the same place when I heard the shot. Before that I was in the kitchen. I was in my house when I first heard the commotion. When I was frightened I went up to a friend on the second floor who gave me coffee. The military man who was shot was in grey uniform. I saw afterwards he had a blouse, but he was not wearing it. I did not see whether he had it on at the time of the firing, but it was on the ground afterwards.

XXd

I did not see anything. Only at night I saw the pieces on the side of the body.

No Redirect

By the Court

The body remained on the ground till about 6.0 p.m. When I heard the commotion there were only a few people in the street. The commotion I heard was the sound of feet, and I also heard people shouting. I did hear the two men talking, but I did not understand what they said. They were standing still near each other. I didn't see anybody but the two men. They were speaking calmly.

(A thoroughly unreliable witness)

DECLASSIFIED
NND 785024
NARA, Date

Sixth Witness (Sworn)

Signora Caterina Castellana Verzini, Via Tre Cannelli 15.
I am a property owner. I was at the window of my house on the afternoon of 5 June, about 3.0 p.m., on the third floor. I saw the officer walk across the street. It was the window of the hall, opposite to the door. It looks out on to Via Tre Cannelli. I saw the officer walk from my side to the other side of the street, and I saw him tear from the boxes on the other side three posters, on which were written "Viva l'Unità". All these posters were exactly the same. The officer had a blouse over his arm, his shirt sleeves rolled up, glasses on, and a cap in his hand. He had no other distinguishing features. I did not see any distinguishing marks on his arms. I did see the blouse over his left arm. I am sure there was no mark on the right sleeve. He succeeded in pulling down the posters. Then as he went down Via Tre Cannelli, a young man appeared coming from Via IV Novembre. The young man was accompanied by a young girl. He approached the officer and fired – pistol to the upper part of his body near the heart. I believe the young man asked why the officer had taken down the posters, but I did not hear well. They were close to each other almost body to body. Then I saw the officer begin to pull his pistol out, after I heard a shot. I saw the pistol fire while was taking it out of its case, but he was not in time, as the young man fired. After he was shot, someone, I do not know who, took the pistol away from him. It was a young man wearing a beard, not too long. I saw him from above. He had a beard. On his left sleeve there was an arm-band. I believe accused is the man, but I cannot swear. If he had a beard on I could identify him better.

58

DECLASSIFIED
NND 785024
By NARA, Date

I don't know if the two men talked to each other – it was just an instant. The young man remained by the Lieutenant after the shooting, unarmed in hand, & did not move away. Previously I saw him moving towards the Lieutenant, pistol in hand, and he had only time to say a few words before he fired. He did not move back before he fired. He paused long enough only to say a word or two before he fired. They were near each other when the ~~young~~ officer got his pistol out. I saw the officer fall, & he fell with his head pointing towards the middle of the road, feet towards the opposite side. Afterwards the young man stayed there with the body, pistol in hand, & talked to one or two people. As soon as I heard the first shot I put my hands to my head, & then back from the window. I believe I heard another, not perhaps 2 other shots. I am certain I heard a second shot. They came one right after the other. I cannot say precisely how long.

xxd

I saw the Lieutenant take the pistol from his holster. I noticed that the officer was wearing – band on his arm. It was a white band, I believe, with certain signs on it. The Lieutenant had his jacket over his left arm. He had his shirt sleeves rolled up, and the jacket was over the upper part of the arm. I cannot be sure if the Lieutenant was wearing a cap. I did see a cap, either before or afterwards. He did wear glasses. The Lieutenant was alone, and the other man had a girl with him. After the first shot, the people in the street approached the scene. I was about a half above the street on the arches in this Court. I was at the window to see the Americans pass by in the street. There were some vehicles passing along Via Quattro Novembre – which is close to Via Tre Cannelli. I saw an American

DECLASSIFIED
NND 785074
By NARA, Date

time a photograph the dead bierement. This was some time later. I had been at the window already about 20 minutes when the shot was fired.

Recd

I have attended here to-day because I was summoned.

By the Court

There were people on the corner of Via IV Novembre. That is within a few feet of my house, and of the place where the shooting took place. People were behaving normally, there was no shouting. Before the shot was fired there had been no disturbance in my street — there was complete calm. The three postins were in three windows, one in each window. They were the only postins in those three windows. There were other postins in the vicinity, but the bierement only took down these three. They were new postins — part of either the morning or the day before. I did see the bierement get the pistol out of the holster, when the shot was fired. I can only say I saw him drawing it out — I cannot say what for he got it. I did not see if he was able to point it.

Further recd

I cannot say whether the bierement fired with the pistol.

Seventh Witness (Sworn)

7 Major A. Battisby, Deputy Chief Public Safety Officer, Rome. We have employed many Italian officers to work for us. There was one called Giorgio Barbirai. On the morning of my arrival, this officer met me, by orders of Col. Pollock, to conduct me to Col. Pollock. That was at 4.30 a.m. on the 5th. He took me to
6 Col. Pollock, and remained with me till mid-day. In the meantime I had proposed to this officer that he should

DECLASSIFIED NND 785014 By NARA, Date

remain temporarily, as my personal assistant. He accepted, and I addressed a letter to his C.O., asking for him to be delegated for this service. He left me at mid-day for his meal, and I never saw him again. It was within my competence to ask for this officer, as I am responsible for the Carabinieri, Guardia di Finanza, Fire Guards etc. I authorised the Second officer to wear the armband, which is the same as that issued to Civil police to-day. I never saw him wear it — but he was issued with and authorised to wear it.

XXd

It was not necessary for me to wait for the reply of the C.O., before employing this officer. I wrote as a matter of urgency.

No Re-xin

By the Court

The Second officer was due to return to duty at 2.30 p.m. He would have been on duty as my personal assistant in the office. Till 2.30 p.m. when he was due back, he had no duties to perform, in respect of my office — but of course a police officer is always on duty.

(Adjourned 1700 hours)

15 July 1944
Court re-assembled at 0920 hours.

Eighth Witness (Sworn)

Carlo Coppoli, Foro Traiano 1. I am a student. On 5 June about 2.0 p.m. I was at the office of the newspaper L'Unità, together with my newspaper colleagues. About 3.0 p.m. I left, accompanied by Romolo Bustreque, the accused. I had gone to drink water at a fountain in Via Tre Cannelle.

DECLASSIFIED
NND 785084
By NARA, Date

Accused accompanied me – I don't know is – had my other motives. In Via Tre Cannelli I saw a man in uniform, who with his right hand was removing posters of L'Unità from the wall. He had a grey-green shirt with rolled up sleeves, a jacket he wore over his left arm, with no head covering. He had no distinctive sign on his arms. I did not see any. Accused said "Halt" to the man. He stopped. Accused asked the reason for his act. The military man did not answer, but asked who accused was. Accused produced himself as a friend of the newspaper L'Unità – an armed friend. Then accused invited the military man to follow him to the newspaper. It was in the nature of a friendly, not a civil conversation. They did not go to the office. The military man put his hand to his pistol – took it out, placed a round in the chamber, and pointed the weapon at Bartolucci. Bartolucci was armed, but he had no gun in his hand. His right hand was in his right trousers pocket – not the hip pocket. I suppose he had his gun in the right pocket. When Bartolucci took out his pistol, I looked round and noticed about 5 metres behind him an individual in civilian clothes with a pistol in his hand. I saw Bartolucci point the pistol to the left side of the chest of the accused. When I saw the individual behind Bartolucci I threw myself aside and cried "Watch out!" I heard shots immediately following my crying out. Accused did not immediately flinch from Bartolucci – he just took one step backwards and fired, I believe 3 times. I cannot say if the lieutenant fired. I know there were several shots, but I don't know who fired. The lieutenant fell to the ground. Then he raised his upper half of the body and pointed the gun at accused. Accused was leaning down on him trying to help him. The lieutenant did

DECLASSIFIED
NND 785024
By NARA, Date

not join the sitting position. He just raised the upper part of his body, raised his hands to his head, and then fell back again. He did not say anything. I thought his gestures were contractions of death. Accused only turned down towards the Lieutenant. He still had the pistol in his hand – I believe in the same hand. I does not recall accused said "Look for help, look for someone". He said nothing else. I moved to go to the newspaper, but on the way I met a civilian with a police band coming towards us. There was not a word. This civilian was the first person I saw. I think that those who had been there had left the place. I entered the Lieutenant the first time when I reached the point where I could see Via Tre Cannelli and Via Cordusio, and I then saw him falling down the entrance from the third window. I was in company with accused. When I saw gestures being uttered, I don't remember if I said anything to accused. I don't think accused said anything. In any case it was a gesture that we were in only considered offensive. Accused showed this by saying "Halt" to the Lieutenant. He said it in a loud voice in an intimidating tone. The Lieutenant was already nervous. I noticed when he was uttering the gestures he made a gesture – if I remember rightly in a hurry. I noticed he was surprised by the "Halt". I believe accused's gun was a 9 calibre Beretta. I have transported arms in Rome for some time, so I became familiar with arms. This particular weapon was shown to an Australian officer. I believe it was at the time of the demonstration that I experienced the calibre. I think the demonstration was the day after the shooting. It was the accused who gave it. The Australian officer said the Beretta was a good pistol, after was how the question of calibre came up. The conversation was between accused & the officer, but I was present. Accused said it was a 9 calibre. Before that time I did

DECLASSIFIED
NND 785024
By NARA, Date

not discuss the libre with accused. per that time I did not know what the calibre of the pistol was. I believe the policemen who took our names knew the calibre. It was an Italian civilian wearing a police band. I believe his name was Alessandrini, but I does remember exactly. (Peretta Giorgio is brought into Court) This is not the man.

XXd

Accused was wearing the armband of Volunteer of Liberty. He showed it to the policemen, just as he had showed it to Barbarisi. Barbarisi did not say anything when he was shown the band. Accused had a document, but not a regular one — he had a false identity document. He had a false document, because he was being looked for by German police, & he had taken part in partisan activities. He told the policemen that the document was false, and that his name was Rosario Bonsignore. Policemen did not ask accused for his pistol. He said accused had the right to have it, since he had the band. Accused was commanding the guards at the newspaper office. He was at the disposal of the Committee of National Liberation. I don't know what happened to the civilian that I had seen present. I believe he ran away up the Via Tre Cannelli which runs away to the right. I don't know of other incidents that day that I witnessed myself. I knew we feared that the Fascists might perpetrate acts of reprisals, we knew there were still fascists in Rome. We thought that there were still some Germans in Rome. When I went away for help, the accused remained 2 or 3 metres from the body.

No Redxtn

By the Court

Both the accused and the second officer had pistols.

05

DECLASSIFIED
NND 785024
By NARA, Date

I don't ... if they both fired. The accused officer was carrying his pistol in a holster. I saw him take his pistol out of the holster. As I have already said, he took his pistol out, put a shell in the chamber, and pointed the gun at accused. Accused already had his hand in his pocket, possibly it was a matter of habit. I saw accused take out his pistol. The Lieutenant took out his pistol first and pointed it at accused, before accused had taken out his pistol. It is not correct that the accused pointed his pistol at the Lieutenant first, and that the Lieutenant then tried to get his pistol out of the holster. I don't know who the other civilian was who was standing a few metres away. I don't know, but I think he too fired, as I heard shots pass close to me. When accused fired, the Lieutenant had his gun in his hand. When the Lieutenant fell, his pistol was on the ground on the right of his head. As Lieutenant partly raised his body and his head. As Lieutenant partly raised his body and his arms, the fingers of his hands opened, and the pistol fell to the ground. He had it in his right hand. I cannot say I saw accused fire - it was my impression that he did. I had already withdrawn to the right. I cannot say I saw him withdraw his pistol from his pocket. I saw him take a step back, but he did not then have the pistol in his hand. Before accused took the step back, the Lieutenant had already pointed the pistol at him - at his left side at the height of a horizontally raised arm. I kept that position while accused took a step back. The Australian officer has a difficult name to remember. I met him at the newspaper, because he presented himself as an Australian Communist. The arm-bands, such as worn by accused, were distributed at the office

66

DECLASSIFIED
NND 785014
By NARA, Date

of the United to all the patriots, but I does know by whom. It was an official and by the National Committee of Liberation, not a band of one particular party. Accused was in command of a guard, composed of patriots who had entered Rome with the Allies. This was a guard for the newspapers. I do not know who ordered the guard. When I left the office with accused I did not know he was armed, but I assumed so. That morning I had gone to the office to get cheques cashed from Gad, and I stayed on to keep the guard. When I left the office with the accused I was going for a drink. I have known accused since the end of September. We are quite good friends. I see him often for reasons of work. I leave the calibre of accused's pistol when it passed from him to the Australian officer. The accused had been in Palestina or Valmontone, where he was operating. I was in Rome up to early May, or then I left. I returned again about 3 or 4 days before the Allies entered. I think the accused came to Rome a little time before the Allies came. I only saw the accused's gun afterwards – immediately afterwards. It was a pistol – the same type as the one I saw given to the Australian. From the command "Halt" to the shooting the lapse of time was just sufficient for him to say the words I have described. I cannot say how long exactly, as I was excited at the time. It was a minute perhaps – I cannot say.

(A good witness).

Ninth Witness (Sworn)

Captain Greenhill, Capt. G.S., attached A.M.G. Rome Police. Lt. Col. Pollock delegated to me the investigation of this case, and to ascertain who was responsible for the shooting. I took statements. I took a statement from accused, after cautioning him in accordance with the procedure in

DECLASSIFIED
NND 785014
By NARA, Date

English la. I saw accused at H.Q., A.M.G. Police, in Palazzo Venezia. I told him I was - Captain of Police and that I was investigating death of Lieutenant of Guardia di Finanza, which occurred about 3.0 p.m. on 5 June. He replied - "Yes, I did it". I cautioned him, and he said "I want to tell you all about it". I said to him that I wanted him to understand that he need not say anything further unless he wanted to; that if he did say anything, it would be taken down in writing and might be used in evidence. I did that through an interpreter. I identify and produce statement made by prisoner after caution, taken down - in my own hand, attached where signed and signed on each page by accused. Accused signed the alterations and also the mistake in spelling that I had made. I made no promise and no threats to accused before taking the statement. I did not offer any alterations if he made a statement. (Statement accepted and marked Exhibit 1). I produce and identify 3 cartridge cases in an envelope, which were handed to me from the Lieutenant of the Guardia Finanza - I believe his name is Pasqua. They have never left my custody since. I actually received the cartridges from an Atente di Pubblica Sicurezza called Paretta. (Envelope containing cartridge marked Exhibit 2). I myself arrived in Rome on the very early morning of 5 June, about 4.30 a.m. I personally posted proclamations in Rome at 6.15 a.m. on morning of 5 June, particularly Proclamations 1 and 2; I posted them in Piazza San Lorenzo in Lucina, just off Corso Umberto. At 11.30 a.m. on 7 June I visited the mortuary at the Policlinico Hospital in Rome. I saw the dead body of the Lieutenant of the Guardia Finanza, dressed in the uniform, which is well known to me.

DECLASSIFIED
NND 785024
By NARA, Date

At 2.45 p.m. I resumed at the hearing. Dr. Fontana Mario carried out a post-mortem examination. I saw a wound in the front of the chest, and also a wound in the lower part of the back. The doctor examined the whole body, and there was no other injury apart from these two wounds. Later that afternoon I visited via Tre Cannelli.

No xxtion

By the Court

From my previous experience as London police officer, I thought that the bullet had been fired from close, and that the hole on the back was obviously a hole of exit. It was smaller than the hole of entrance. I saw the doctor ascertain that there was a clean hole right through the body. He did this with a probe. There was only the one wound in the body. I examined the deceased's clothes. He had his jacket on, his breeches, jack boots, shirt, collar and tie. I could see no sign of injury on the jacket, so I unbuttoned the jacket and examined the shirt, which showed a hole in front and another in rear. I did not then know the facts as to the finding of the body, but I came to the conclusion that the deceased was not wearing his jacket. The shirt was slightly frayed and blood-stained round the hole of entrance. The hole in the back was hardly frayed at all.

xxd (with leave)

There were faint traces of tattooing round the hole in the shirt, indicating the shot was fired close to. It may have been fired.

Tenth Witness (Sworn)

Pancetta Giorgio, Agente di Pubblica Sicurezza.

I received orders from Adj. G. in this case to make inquiries, and to collect signed statements. In the

DECLASSIFIED
NND 785024
By NARA, Date

cause of the "shots" I came into possession of 3 shells. I identify Exhibit 2, as shells which I received from an officer of the Carabinieri some 10 days after the shooting. I passed them to Capt. Greenhill. I don't remember the name of the officer of the Carabinieri. From the time I received the shells till I turned them over to Capt. Greenhill was only half an hour.

Xxtion

I took statements from all the witnesses, except Signora Vergilli expected to sign her statement. At 1500 hours, precisely on 5 June I went to Via Tre Cannelli. I was going to the office. At the corner of Via Tre Cannelli, standing about 100 yr. away, I saw a body on the ground covered with a sheet. I enquired the body to see an military, from the boots out from the grey green trousers. I approached, because an officer of the Guardia di Finanza and one of the men of the Guardia di Finanza were standing near the body. I asked the Officer if he needed my help. He said No. I raised the sheet, and saw that the deceased was Lt. Barbisi, whom I had seen in the office that morning. A little distance from the body was the jacket of Barbisi folded. Near the windows of the porter boxes I saw the cap of Barbisi, also folded. I moved away and joined a group of persons who were present.

[Case for the Prosecution subject to calling Lt. Pasqua to give formal proof of the custody of the shells (Exhibits a).]

146

The Court explained the rights of the accused.

(Adjourned 1245 hours.)

17 July 1944

Court re-assembled at 0910 hours.

DECLASSIFIED
NND 785024
By NARA, Date

Aw. Adelino opens.

The prosecution here wd prove accused's act illegal. But the defence can prove his innocence quite clearly. We shall prove, first, that the incidents took place in an atmosphere of war, and that Bartirogna, under orders of Committee of Liberation, had to be in a state of anxiety & unrest. Secondly we shall prove that accused was a volunteer of liberty on Italy, charged with the task of guarding the seat of L'Unità and adjacent premises against possible attack by Nazis or Fascists. Thirdly we shall prove that accused was authorised to carry arms. Fourthly we shall prove that the patriots were bound by orders received, and at the material time it was not yet known that the Allies were taking over all police duties. Fifthly Bartirogna and the other unidentified man, removing the posters, was doing a thing that appeared to be hostile to the principles of the patriots — and apparently hostile to the Allies themselves. Sixthly the verbal exchange was interpreted objectively and subjectively. Seventhly Bartirogna reacted in a most hostile manner to accused's words, and has the pistol to press from words to arms.

Eighthly accused had no other possible escape from danger, which was actual, imminent, except in the way he did act. Ninthly, on a true view of the facts, the act of accused was, from a psychological point of view, no more than a natural act of self-preservation. Tenthly the act is not punishable by Italian law because the act of defence of the accused was proportionate to the degree of offence offered.

Evidence for the Defence

Accused elects to give evidence on his own behalf and is duly sworn.

Rosario Bartirogna — age 22, unmarried, medical student. From 8th Sept. 1943 I have been engaged in partisan activities, in Rome and the surrounding area. Since 1939 I have engaged in political activities, and in September 1941 I was arrested by the Fascist police on

71

DECLASSIFIED
NND 785014
By NARA, Date

security ... ads. I was called up, military service in January 1943, and discharged for my studies in May 1943. In November 1943, I became a member of one of the partisan groups (GAP) under auspices of National Committee of Liberation. I was a member of GAP Pisacane. The GAP are very light squads organized by the partisans for action in the city streets. I was the commander of the GAP Pisacane. In January, following the Allied landing, the National Committee ordered me to take charge of the Cervetelle partisans. I returned to Rome in March, when the arrival of the Allies was no longer near, and resumed command of GAP Pisacane. I had to leave Rome to go to a partisan zone in early May. I returned to Rome on 2 June to bring a report to my superiors. My command was the military auxiliary of the Committee of National Liberation, working in concert with Allied military authorities. I was sent to Cassino and Frosinone by GAP commander, and I have carried out activities for securing information. On 4 June, as the arrival of the Allies was not considered imminent, my command sent me to a Partisan zone. I left at 7.30 p.m. Towards 11.00 a.m. on Via Tiburtina, I saw Allied formations, accordingly returned, considering that my mission was no longer valid. Returning to Rome, being unable to contact with my Hd., I made contact with my colleagues of San Lorenzo District. On the night of 4-5 I was ordered to carry out activities for security and order in this District. On morning of 5 June I left my companions of San Lorenzo, and went to search for my commander, that I learned I could find at the seat of my party. I did not notice Allied proclamations during the morning of the 5th June. I went directly from San Lorenzo to the seat of the newspaper

72

DECLASSIFIED
NND 785024
By NARA, Date

L'Unità, which is also the H.Q. of my gp, and remained there for 2 days and nights. I did not move from Via Quattro Novembre and its surroundings, except that I went a few metres to East. I did not see Allied Proclamation into posted in that area. On 5 June I was commander of the guard group surrounding the building of L'Unità. One of my superiors gave me that mission. The building is on the corner of Via Quattro Novembre and Via Tre Cannelli, and stretches on to Via Della Cordonata. There were several posters around the building, hailing the arrival of the Allies, the liberation of Rome, the Allied Forces, the newspaper and the Communist party. Posters were of regular intervals — "Viva L'Italia Libera", "Viva gli Eserciti Alleati", "Viva il Partito Comunista italiano", and "Viva l'Unità". There were no Nazi or Fascist posters on the building.

In the afternoon I was dressed as one, with my shirt collar open and over my coat. I was wearing thick shirt. I had a very narrow beard on my chin and moustaches which ended down to the beard. I had a red, white and green armband, inscribed VL (= Volontari della Libertà), with serial number and the stamp of the party. It had been given to me in San Lorenzo by my companions, from whom I departed at that moment. The bands were given by the National Committee of Liberation, to members who were well known by the leaders of the Committee.

In the afternoon of the 5th I made proper visit of inspection around the premises, but did not leave the vicinity.

At 3.0 p.m. I made a second of inspection. I went out through the main entrance on Via Quattro Novembre and directed myself towards Via Tre Cannelli. Carla Capponi was with me. I did not know at the time why she accompanied me. When I arrived Via Tre Cannelli I saw beyond the "elbow" of the street

DECLASSIFIED
NND 785024
By NARA, Date

an individual who, in keeping with another, was tearing down posters on the last show window on the building. They are on the part of the wall which faces Via Tre Cannelli (marked by crosses on attached sketch plan). I also mark with a □ the door of the building from which I came out. (Sketch plan attached to Record and marked Exhibit 3). I did not recognize the two individuals. One individual, slightly at the back of the other was removing posters. He seemed to be in uniform, or rather in parts of a uniform. The other was a little in front of the first individual, a native or so perhaps, and gave me the impression that they were together. I do not think he was removing posters. There was no glass in the show windows. The second man was definitely in civilian clothes. When I saw them, I approached them telling them to stop doing what they were doing. I addressed them both, but only one of them answered directly to my "Halt". It was the military man who answered. He was without a hat, with a coat over his arm, his sleeves rolled up, and I cannot say whether he wore any signs or not. I did not recognize him as an officer, nor as an officer of any particular branch. Many people in Rome had to wear uniform, because they had no civilian clothes. He was wearing black boots, breeches, a grey green shirt, and a coat over his left arm. It was the same uniform as that worn for sometime by Italian officers and officers of the militia — officers and non-commissioned officers. His coat was folded and had been tossed over the top part of the arm, and covered the upper part completely. I do not know which side of the coat was folded. The military man was very excited. He seemed surprised

DECLASSIFIED
NND 785024
By NARA, Date

or my "Left" as I turned to move to my. He turned and addressed me in a most arrogant manner. He said he could do what he liked – in my case that I should say who I was. I replied rather angrily that I was a Volunteer of Liberty, and I showed him my band. Both of us were somewhat excited. As I answered him, the military man put his hand on his pistol in his holster (which was attached to his belt, rather towards the back), drew the pistol out, put a bullet into the chamber by cocking the pistol. He unsnapped the safety catch and pointed the pistol to the left side in the middle of my body. The pistol evidently had a clip in place, but presumably there was no bullet in the chamber. I had my pistol in my right side trousers pocket. I believe it was while he was pointing his pistol I was telling him I was a VL, and that he should follow me to the office of the newspaper. I told him of my duty as commandant of the Grand Group. He rested his pistol on the height of my heart, with a very threatening air. I had my pistol in my trousers pocket, with my hand on. My pistol had a bullet in the chamber, with no safety catch, and the percussion pin loaded. In that position all that was needed was a slight pressure of the muscles between my fingers to put the percussion pin in a firing position. While the military man was drawing his pistol I had already done what I have described, in order to be prepared for the unexpected. All this point several things happened in a very short time – I don't know if successive, or whether they were dependent on my

DECLASSIFIED
NND 785074
By NARA, Date

action. The Lieutenant placed his arm on my head – I heard a woman scream – I took out my pistol – I heard the two opposing shots – even hope that I struck a blow with my left hand against the Lieutenant's right, deflecting it to the right – I jump back one step and fire 3 shots. I intended to deflect the Lieutenant's pistol sideways. The pistol stayed in the hand of the Lieutenant till I saw him dying. I don't remember why I fired 3 shots, but I remember that I did. This was ascertained by the expert when he examined my pistol. I cannot be sure that the Lieutenant did not fire – I believe not. I am sure there were other shots besides my three. I heard more than 3 shots – I believe 5. I don't know who fired them, or from where. I got the impression from the whole thing that they were fired by the other man who was with the Lieutenant. My recollection is that Carlo Caponi was some-what around from me, a little behind me, and to my left. When I fired, the Lieutenant fell, but the cartridges that have already been described, and then he fell the pistol, which was found to the right of the back of his head. I sent Carlo Caponi to go for help, because it did not seem that the Lieutenant was dead, but after a few minutes he died. At the moment of the shots there were very few people in that part of the street, and most of them ran off. After the fall of the Lieutenant, people began to return and look around. I began, as was my duty, to keep order. I did not arrest the Patriot leader (Castelli Alberto) when he started to give evidence, but I arrested him later 163 when he gave evidence about the conversation. His account of the conversation was accurate but omitted one thing. I told him, as he said, that I had acted in Self-Defence, and I told him that this was not the only reason that I did not hand

76

DECLASSIFIED
NND 785047
By NARA, Date

him the arms. In p. 8 I told him that I had to give account for that arm to my superiors at the newspaper office. It was at that point that the officer who questioned me told the Commandant that I could keep the arms, as I was telling the truth. I remember that some officers of the Allied forces came to the scene, saying that they had seen — I don't remember exactly. The members of the Allied Forces came first. I remained on the spot about 20 minutes or half an hour. The officer asked me for documents, and I told him that I had only false documents. I showed them to him, and also gave him my true particulars. (Brigadiere Colantonio Ovidio is longer in the Court). I believe I recognise this officer as one who came up inquisitively afterwards, but he was dressed in civilian clothes. The Brigadiere came at the same time as the Americans. I left Rome on 7 June for reasons of health. In the Fascist Army I served only as a medical soldier, therefore never nothing about arms. I tried to bring help to Badoglio if this was possible.

XXd

Antonello Trombadore was the person who gave me the order to guard this building. He had been one of my commanders when I was with the GAP, and then I was sent to command the Partisans. He was one of the members of the Rome military Committee. I think he gave the order as Commander of the Roman National Guard, of which I was a member under the National Committee of Liberation. I am not accustomed to taking orders from persons of lower official position I am not sure. At that critical time we all had to keep our personalities disguised. In that destructive period, Antonello Trombadore was sought for by the Nazi-Fascist police, air warfare for the first time

77

DECLASSIFIED
NND 785024
By NARA, Date

that I had a big real name. He I'd been one of my commanders in the Partisan period. Also at the time he gave the order he was in company with Giacomo Pellegrini, one of the leaders of the Italian Communist party. Before I was put one there had been a panic, which was not too decisive, – people attacked in front of the building and there was confusion, and I was told to take charge. Miss Capuzzi did not come to call me. She had come to L'Unità to meet her colleagues, and except then she found me. I had seen her during the morning, at dinner in another place, and danced twice during the day. I does know precisely myself what she was doing when she came out with me. It was probably as I was going out of the door that I got into her company, but I cannot remember. No one told me that someone was leaving from position – I saw it with my own eyes. I saw the two as I have described. The military man was the nearer of the two to me. The military man was the nearer of the two to the position – the other was a little behind to the right. I could not see or note how many positions he had been down – I saw later there were three. The military man wore black boots, but I did not see if he had spurs. He was wearing grey-green breeches. He had a shirt of about the same colour. He did have a belt, but not the cartridge belt that goes over the shoulder – or possibly I did not see it because of his coat. The coat was thrown over the top part of the left arm, and perhaps covered part of the shoulder. I does know over which 142 shoulder the cartridge belt goes. I did not see any other particulars in that moment, and I does believe anyone else would. When I called "Halt", the military man turned round, after giving a glance to the other man, and came towards me. He pivoted on his heels and then came towards me. At a certain point we met.

DECLASSIFIED
NND 785024
By NARA, Date

After a little time he said he would shoot me if I tried, and asked who I was. After I spoke to him — with his pistol, just a little in the chamber, pointed the pistol towards my heart. When he did that I believe I said something. He said nothing — he had already said something before. When he pointed the gun at my heart I, since things were happening around me which were of importance, put my hand in my pocket and took out my pistol. With the movement between the first two fingers I cocked the percussion cap, and kept myself ready for the unexpected. I was doing this while he drew his pistol. The Lieutenant had his pistol pointed to my body, hoping I took mine out completely. I believe I took mine out at the moment when he actually rested his pistol against my body. At that moment we did not speak to each other. I cannot say how long elapsed from the time the 2 shots were fired from elsewhere. I did not allow him time to fire because I knocked his hand away — and for this reason I cannot say whether it was the Lieutenant who fired the two shots or not. I gave the blow with my left hand. If the Lieutenant had seen I was armed, perhaps he would have had time to shoot. He had perhaps he would have had time to cock his pistol. After he pointed the gun I gave the blow which deflected it. Possibly I was more ready than he, and thought quicker than he did. In other times it might have been possible to talk away, but we were in an excited atmosphere on that day. I was feeling 2 men behind me: I saw they were acting together, and I thought my life was in peril. I was told that ~~were~~ still Nazi-Fascist elements in Turin, and that one of my companions had been wounded. I was informed that in Piazza Venezia a negro soldier

79

DECLASSIFIED
NND 785024
By NARA, Date

had been attacked and wounded in the head, and later in the day I saw him pass our office with a bandaged. My Commander had ordered me to be specially alert against acts of sabotage against the Committee of Liberation and the Allies. All the things I had heard and seen made me more patient and meticulous in doing my duty as a guard. My own person was exposed to danger. All the patriots were as excited as they could be. The things that happened did, however, disturb the general feeling of happiness among the general people of Rome. I have always been anti-Fascist. The Guardia Finanza was not a Fascist organisation, any more than the Carabinieri or the Army. I agree this is strange — but in fact during the last 7 months the Guardia Finanza has done many things to help us — though of course many of the officers were against us. I did not know the officers were against us. I knew there were officers hostile to us in all the organisations. I had no animosity against any one. I fought those who fought me and my principles and my organisation — i.e. against the Nazis & Fascists. When I saw the Lieutenant tearing down posters, it was an indication that I was pleased with a Nazi or Fascist. During the last 4 months I have myself torn down many Nazi or Fascist posters. Seeing it made me angry. I did not see the uniform. Seeing military dress meant nothing. Patriots were always our off from our families and supplies & had to use whatever we could by hands on. The Lieutenant did not tell me who he was or all. I don't know what I should have done if it had been an old man. I only fired at the Lieutenant because he pointed the weapon at me, & this friend fired, and not because he was tearing down the posters. When the friend was against

DECLASSIFIED
NND 785014
By NARA, Date

my heart I depressed myself against the . extreme danger. I agree it is possible that the third man fired with the air pistol to frighten us. In fact both my eyes were tightened, and I fired. To tell the truth I did not aim at all.

(Adjourned 1245 – 1420 hrs.)

As I said before I already had my hand in my pocket when the lieutenant was preparing his pistol, and with the membrane between my two fingers I pulled back the percussion cap. Meanwhile the lieutenant drew his pistol and cocked it. The action of the lieutenant and myself were simultaneous and I cannot give the exact sequence of time as to these acts which succeeded each other with such amazing speed. I extracted the pistol, gave a blow to the lieutenant's arm, took a step backwards, and immediately afterwards fired. I cannot say exactly when it was the lieutenant pointed his pistol at me. I have no point of reference. All I can say is that he did it. Perhaps the blow of my hand was more rapid than his pulling the trigger. I cannot say whether my blow was heavy or light, it was sufficient to displace the pistol. My jump back was a hurried step back, and I should say I fired before my backward movement stopped. I only tried to displace the arm – I did not try to take his pistol. I agree that a certain point both our pistols were out. The lieutenant's pistol had hardly been pointed towards me when I gave the blow. The lieutenant said nothing. I heard 5 shots altogether – I cannot give the sequence of the shots. I did not say I heard 3 shots followed by 2. (Other witness said "Ce pis due"). At that moment I does know that I should have retired to place if the lieutenant had fired. I fired 3 shots, and I heard them clearly. I cannot say if the other 2 sounded higher or lower – I was too excited at the time. I have never said the lieutenant fired the two shots. I said that I believe he did not fire. Even if he had fired I should not have been able to notice the fact, I was so excited.

81

DECLASSIFIED
NND 785014
By NARA, Date

I did not see the lieutenant because he had fired, but because his thrust was the more incredible to me if the 2 shots were fired by someone else. The enemy further away has less possibility of doing injury than the nearer one. The lieutenant's coat covered his left arm from elbow to shoulder. Even when the lieutenant unfastening his pistol replacing the holster in the chamber, the coat remained in the same place. He was exerting pressure to keep the coat in the same place, and still had the arm in the same position when he fell. I have myself, when preparing the Gunners, fired a rifle while holding 2 or 3 other cartridges in the other hand.

(Witness gives a demonstration in Court with a borrowed Carabiniere coat and pistol).

If you could see my upper arm then, it was because you had special reason for looking. I had no special reason for looking at the lieutenant's arm. I do not remember on which side the lieutenant carried his holster. I had the impression it was on the right and to the back. If I did not see the hand, I may suppose it was not there. I guarantee that I did not see it. If my statement say that I took a few paces back, it may be due to a mistake on the part of the interpreter.

No Reaction

By the Court

My job was to supervise the discipline of the guard on the building. Generally the duties of the guard were to keep order, to direct crowds, remove loiterers, and to keep the street clear. We feared armed attack on the part of armed Nazi & Fascist elements. It was thought on that date that these elements might show themselves openly. We stayed up all night that night, awake, because we had received news of an attack or Torpignattara. There was never an attack against our building. I did not regard the lieutenant's presence as an indication of an attack - merely as a demonstration. When I made my tour of

DECLASSIFIED
NND 785074
By NARA, Date

inspection I was not looking for anything in civil. I had been on the morning all day. It was not strictly a tour of inspection. I was simply going from one place to another. I had no particular destination. My weapon had been given to me by a companion. I had received no specific instructions as to opening fire. I was just invited Barbarisi to accompany me to the newspaper office. I think the time was about 3.0, perhaps 2.45. I don't think it can have been before 2.30. I thought the authority I had did give me special authority. I mean authority to maintain public order. The band was in the nature of a procession. My orders were to maintain public order, if order were disturbed by any cause whatsoever. I thought I had authority to fire in case of necessity. In case of disturbance my duty was to quell it peacefully — if it was an armed attack we would have responded with rifles. Five or six, or perhaps ten, minutes after the shooting I moved away a short distance to carry out my duty to preserve order. Up to that time the lieutenant's pistol had been lying in the same place. I do not know whether the witness Alberto Castelli arrived before or after I moved away. During the time I moved away from the body the lieutenant's pistol disappeared. I immediately looked for it. At that moment an agent of P.S. had arrived and I handed over to him. He is not in Court. I should know him again. I asked those present where the pistol had gone — or rather we asked, but with no success. I agree it was a serious matter — but I was alone, and I was surrounded by a fairly large crowd. I believe I have been asked about this pistol before. The leaving from of the position was not a cause of my firing. It is true it is an indirect cause, and I should not have interfered if the Lieutenant had not touched the position. I got the impression that the lieutenant was unhappy at the

DECLASSIFIED
NND 785014
By NARA, Date

hand left [illegible], and then he was a bit in a hostile way because of it. At the moment was unable to control my emotions, and I don't know what effect it would have had on me if I had seen that the Lieutenant had an armband. If I had seen an armband I might have asked him more calmly why he was wearing posters. I don't think people employed by the Allied Forces would be likely to tear down our Communist Party notices. If I had known the Lieutenant was employed by the Allied Forces I should have addressed him in a calmer way. Actually I did address myself to him in a hostile way. I did not think of the effect of doing so at the time, because I was very irritated. I would agree that the way things happened we both lost our tempers. I do not agree with the evidence given by Signora Vergini. I do not know her, and she has no reason to concoct a lie against me. I think her observation was bad. I did tell the police that I had knocked away the Lieutenant's pistol with my left hand. I cannot explain why it is not in the written statement, as I regard it as most important. My pistol is a gift from a companion, and I gave it to an Australian. Arms were not issued by our superiors, we had to get them for ourselves. I had the right to carry firearms — we were fighting and risking our lives. My band was sufficient authority to carry arms, at least according to the Allied Radio. I speak of bands issued by the Committee of National Liberation. I did not think the band gave me the right to defy the law. I was defending the law. It was after I crossed Via Tre Cannelle that I first saw the Lieutenant. He was about 10 metres away — I cannot say exactly. I in fact started work for the Bracciasso Partisans without any training in

DECLASSIFIED
NND 785014
By NARA, Date

arms. I fired my first shot in combat since then I have had a lot of experience in the use of arms.

Second Witness (Sworn)

Colonnello Ovidio, Centro Raccolta dei CC.RR. I am a Brigadiere of CC.RR. Before 8th September last I was in the Internal Corps of the CC.RR in Rome. Since 8 Sept. I have not been on duty in Rome with the Fascist Police. I was part of the Patrizi musemi's band. The band operated in Rome and outside. On 5 June about 3.0 o'clock I was in an American jeep, with an American Captain, a Sergeant and a driver — also an American prisoner who had been my guest for some time. At 3.0 o'clock we were on the corner of Via IV Novembre e Via Tre Cannelli. The American prisoner left a statement with me.

(Statement produced and read by the Court. It contains nothing but an unofficial testimonial to the character of this witness, and after perusal is handed back to the witness).

We were visiting various allied offices trying to find a uniform for my prisoner. We were in Via Quattro Novembre ready to turn into Via Tre Cannelli — we were stopped by traffic coming to meet the turn. I was sitting beside the driver looking into Via Tre Cannelli. I saw a man in uniform with sleeves rolled up, jumper folded on his arm, running down posters. The posters said Viva L'Unità, Viva l'Esercito Alleato, etc. I did not notice any particular signs on the sleeve. Later I recognised him as an officer. I did not notice if there was a band on the jumper. Our disciplinary regulations absolutely prohibit appearing without a coat, whether on duty or not. This is of general application to the police forces. Military discipline prohibits it. The band is supposed to be worn on the left arm on the

DECLASSIFIED
NND 785074
By NARA, Date

blouse, not a shirt. After the officer had taken from 3 paces he continued to walk along via Tre Cannelli towards the stairs. He had not yet reached the stairs. On the lower via Quattro Novembre a young man and a young woman appeared, going in the same direction. I recognised them both here in Court (witness points to accused and to Carla appuni). But the young man then had a light beard. Accused said something aloud — but I could not hear what because of the noise of traffic — and the officer then made half a turn. There was a brief exchange of angry words, which I could not understand, but could see. The officer then took out a pistol from the holster. I saw him load the pistol, cock it and point it against the accused.

(Court adjourned at 1700 hours).

18 July 1944.

Court re-assembled at 0915 hours.

I saw accused put his hand in his right hand pocket, take out his pistol with a huge gesture, shielded himself with his left hand, drew back a step, and I heard some shots. By a "huge gesture" I mean a rapid gesture. I followed Bertocchi — he was approaching the officer. He did not have a weapon in his hand — he was arm in arm with the young woman. I can definitely exclude that he had a weapon in his hand. The young woman was — the left, the accused was on the right. By "shielded himself with his left hand" I mean he tried to deflect the weapon. I don't believe accused stepped back more than one pace, because they were very near each other. I heard 3 or 4 shots — then there was an echo, and I can say positively how many I heard altogether. When the shooting took place the military men fell backwards. Then he made a gesture — up to rise, and made gestures with his hands. He made contractions with his hands, still trying to rise; then he fell back again, and the pistol fell from his hand, and remained on the ground level with his right shoulder.

DECLASSIFIED
NND 785024
By NARA, Date

I did not notice that the officer was an . . . of the Fire Guard. I saw the officer tear down 3 posters. I only saw one particularly, which said L apostrophe something – I assumed it was L'Unità. When I saw the posters being torn down I saw 2 or 3 other persons near the officer, walking by. I saw someone near him, behind of him. I did not notice who was the closest person to the officer. Accused and the officer were the persons closest to me. I could not precisely say how many shots were fired. I don't know who fired the shots, or if the same person fired them all. I was dressed in riding breeches and a light coloured jersey – civilian clothes. I had a black band with the word "Police", and a rectangular piece of cloth, with a star, meaning Sector Commander and Squad Leader, on my left breast. I was with 3 Americans. I walked towards the wounded man to see if I could help. When I arrived near him he died. Accused approached me and said "I have not killed him to commit a murder; I did it in self-defence". He also said "Tenente, Lieutenant, I put myself at your disposal, in order that light may be shed on all the factors". I imagine he called me Lieutenant because he saw the star and the band. The Americans with me said that having seen what happened they would have taken care of it all. When the Americans left the scene, they left accused on the spot. They did not speak to accused at all. The Americans spoke amongst themselves in English. I did not see that the officer was acting under the authority of the Allies. On the 5 June I myself surprised some false partisans with bands on their arms who were pillaging a villa. I arrested a member of the German S.S. who wore a band and had regular documents. That was about 9.0 a.m. on the 5th.

DECLASSIFIED
NND 785024
By NARA, Date

About 13 hrs I was present at the pillaging of the villa. I am here because on Saturday morning I saw a newspaper article about this case. I read that the witness Castellani had been unable to relate the facts as they took place and had contradicted himself. This was in the "Ricostruzione". I reported the facts to my superior officer, maresciallo maggiore, De Angelis, and I was invited by him to come here to testify. I went to the maresciallo commanding the Station at the Palace of Justice. He accompanied me to the Prosecuting Office — this was about 12.0 noon on Saturday. I found there 2 civilians, one at the table and one at the typewriter. I did see armed patriots in Rome on the 5th.

xxd

I have been 12 years in the CC.RR. I first met accused on 5 June, after the incident. I had never seen him before. I had not known of him before. I do not know what party accused belongs to. To go into our a House is not permitted. Badges of course, by the rules, must be worn on the House. I don't know the names of the American captain and the American sergeant-major. They were just visiting — following the 5th Army. The prisoner said he was leaving for Foggia. I told the story to my Superior last Saturday. Previously I told it only to my family. It did not occur to me to get the names of the American Captain and Sergeant. I was convinced that the Americans would have taken care of it all. I don't know the nationality of the accused. I spoke to him in Italian. The accused was in Italian. On 5 June I had not yet resumed duty with the CC.RR. I am now with the Centro Raccolta. That is a Company pool for disbanded CC.RR. He shall be despatched from there and given the necessary documents. I don't really know my status at present.

88

DECLASSIFIED
NND 785074
By NARA, Date

We were going and in the jeep to the Allied Commands in order to find a weapon for the prisoner. I left the Americans right after the incident, about 1530 hrs. I went to the Band Hotel. We were going from Via Cesare Battisti towards Via Nazionale. We were in front of the L'Unità Building. To turn into Via Tre Cannelli the jeep had to turn left. We had to stop to let other traffic go past. I saw the Lieutenant turn down 3 positions. He was dead when I arrived on the spot. I got out into the street, walked to the Lieutenant, & found he was dead. When I saw him turning down the positions, we were in the jeep, stopped – via Angelico ~~Tre~~ November ~~Cannelli~~ We were still there when the shots were fired. We had to wait for many cars. They were military vehicles. In spite of the traffic I could see all I have stated. I did not know who fired the shots. I left word on Saturday that I wanted to see the Prosecutor. I did not say when I was coming back. Immediately afterwards I saw an employee of the lawyer, and said I could give evidence, & left my name and address. Immediately afterwards I was told by Avv. Nicolai to be here on Monday. I do not say that the witness Castellani gave wrong evidence – all I say is that what I read in the newspaper was wrong, and she contradicted herself. The American Captain took down the name of the street. I did not tell the accused who I was.

NO Re-exam

By the Court

There were 5 persons in the Jeep. I was at the back of the Jeep on the left. In front alongside the driver was the Sergeant-Major. The Captain and the prisoner were in the back. The Captain was on the right, and

DECLASSIFIED
NND 785074
By NARA, Date

the prisoner was on the left side behind me. I was sitting with my feet hanging outside the vehicle. The Captain was a Captain of the military police, and the Sgt. Major was also military Police. I only know that they belonged to the 5th Army. They were wearing bands, and the prisoner told me he was a Captain, because I could not distinguish ranks. Only the Sergeant Major was wearing a band – the Captain had a field jacket. They came to find me in the Via dei Guacchi, where the prisoner knew that I lived. I was in the office of the band, and they asked me to get in and accompany them, to use me as a guide to show them where the different stations were. When the traffic cleared, the car turned left into Via Tè Cannelle. In Via Tè Cannelle it stopped, and we got off. I got off first. In the car remained only the driver. I went immediately over to the wounded man, and then I spoke to accused. The Americans remained at the back of me. They were there in the street for everyone to see. I could do nothing because the band had been disbanded and I could not be seen. I don't know what the Americans were thinking. Immediately afterwards we went to the Bar at the corner of Via Tè Cannelli. As soon as accused said he was staying and wanted to give us explanations, we all went away to the Bar and left accused there. It seemed to me that the Americans did not attach too much importance to the incident – they invited me to the Bar. I agree that I thought their action in doing so was most extraordinary. I also declared that the body had to be removed to hospital. The Captain and the prisoner said they would take care of that. I don't know what steps they took. After we came out of the Bar, accused was still there – and then a civilian came who began to manoeuvre around over the body. He said an Italian police captain would have come.

10

DECLASSIFIED
NND 785024
By NARA, Date

I did not attach any more importance to the matter, because I knew the Americans would take care of it. That is why I did not speak till Saturday. Until Saturday I never saw anything about this case in the newspapers. We had nothing else to do on that day except look for a weapon of the prisoner. When we came out of the Bar, we went to the place where the incident took place. We stayed a few minutes. Bertinaria was still there. Since I had to go to the office of the Band, for the handing in of arms, I asked to be excused some days, leaving the others on the scene. I first met the Americans about 1430 hours. As long as I was with them they did not find a weapon, because the stations we went to had none. The first place was Pincio, Villa Borghesi, and we found ~~none~~ none there. Then we went to the Station ~~of~~ of Genova Carrabbia, near the Railway Station in Via Cestel Petrio. At those places we found military personnel but no weapons. I don't know the units who were at those two places. At the second place we found some American soldiers, but they told us H.Q. had not arrived yet. We also went to Piazza Venezia, but we searched at H.Q. We were told there was a H.Q. there, but before going to the Captain wanted to go to this Bar. So we turned the jeep and went back to the Bar. At the time of the incident we were going to the Bar. I saw the lieutenant point his pistol at accused. I saw him fall to the ground. When I arrived there was only accused and the lieutenant. I saw the lieutenant's pistol in his hand and on the ground. I did not touch the pistol. It was still there when I left. It was still there on the ground after we came from the Bar.

DECLASSIFIED
NND 785024
By NARA, Date

he were only in the Bar for a minute. I believe the bird was a Beretta, but I did not examine it. I was wearing a star and an armband. They gave the usual signs that we had received from the Board. The Allied Command had already ordered the Board to be disbanded. I did not think I was on duty. I don't know to which organisation accused belonged. He was wearing an armband – also a tricolour, but I did not notice the writing on it. The fact that we both were armbands showed that we had been active patriots. I did not think accused was in danger of being tried as an assassin. That is my personal opinion, as I saw that he only disputed himself. Accused told me his name. I did not know if it was true or false. He did not show me any identity card. The young lady confirmed that he was Beretta Vegna. I made no inquiries. I have not seen the American Captain or Sgt. Major since. I saw my friend the prisoner about 2200 hrs. that same evening. He slept that night at my house, and next morning he left. I have not heard from him since. I did not make any written notes. I made no notes of the names or addresses of the officers.

Further xxd (with leave)

I did not discuss this case with my prisoner friend that night. I did not return to the scene of the crime. I did not take any further interest in the case, because the American captain said he would take charge of it. I had no contacts with my superiors for some days.

135

Further Rxd (with leave)

The name of the American Prisoner is John B. Sergeant (it is a Jewish name) and according to the letter in my possession his serial no. is 19072607.

(Adjourned 1215-1330).

DECLASSIFIED
NND 785024
By NARA, Date

Third Witness (Zocca)

Mario Cevolotto, Avvocato, Via Valadier 35, Roma. I am not a communist. I belong to the Democratic Party of Labour. I am the General Political Secretary of the Party. The political direction of the party depends on its organisation and tradition. The tactical direction depends on me. During the 9 months of Nazi domination the Federal Secretary, Bardi, came to meet me, but I was able to hide and carry on my activities under cover. They arrested my wife and kept her for 3 days. I was a member of the National Committee of Liberation, being second member in my Committee, under Marcello Leoni who was first member, and being also a member of the Military Detachment. This constituted the Command of the Operation Board, and was composed of a member of each of the 6 parties, for the deliberation of military problems. The Military Detachment had contacts with Marshal Kesselring's H.Q. It was commanded by Col. Montezemolo, who, after he was arrested and shot, by General Odone.

We had our contacts with General Odone, until he was arrested by the Nazis some 7 or 8 days before the Allies entered. General Odone was in direct contact with the Marshal Kesselring, I suppose through radio. On the 5th June the patriots were armed with all the arms they could be found during the period of clandestine activities. I have knowledge of many cases of patriots losing their positions of my of the parties. I have known accused for many years — his father practised before his progress for promotion in my office. The family have always come to me for advice since. (Avvocato was duly warned of the consequences of giving the character of the accused in issue). The relations of the accused have always told that accused is intelligent, quick and vivacious, at the same time good and obstinate. I, in my relations with him, have judged him to be a very vivacious young man, but fundamentally a sentimental

93

DECLASSIFIED
Authority NND 785024
By NARA, Date

and moment

xxd

I don't ever remember seeing accused angry or irritated. I had never any cause to see him excited or injured. I don't know how he would react when angry – owing to difference in age, our relations were rather those of superior and inferior.

Fourth witness (Sworn)

Celeste Carlo Negarville, Piazza di Spagna 51, journalist. I belong to the Communist party. On 5 June I was a member of the Board of the Party and Director of "L'Unità". I knew the accused. At 3.0 p.m. on June 5 I believe I was at the typographical department of "Il Messaggero". I returned to L'Unità office about 3.30 p.m. I entered in Via Tre Cannelli the body of Barbarini still covered with a sheet. I questioned the men on guard and learnt what happened. I met the accused. He told me that half an hour before he saw a man – (stopped by the Court, on the ground that we cannot give effect to hearsay evidence where the best evidence is available). Accused was a member of the GAP. He did not depend on me – he depended on my companions who dealt with military matters, particularly Antonello Trombadori and Giacomo Pellegrini. On 5 June accused received his instructions from the Military Detachment of the National Committee of Liberation, of which I was a member. The instructions were to keep order, in case of abandonment of the city by the Germans, armed attack on Germans or Fascists in case of resistance. If the Germans had not left, it would have been the duty of the accused to fight them. These dispositions were in accordance with orders of General Odone, who was believed to be in contact with the

DECLASSIFIED
NND 785024
By NARA, Date

Allies – at least arrangements were made upon the arrest of General Oddone, but they were valid after his arrest. (Objection on part of the prosecution on the ground, that Defence is not producing the "Best Evidence").

I can produce a statement of the President of the Council, Bonomi. I don't know anything in writing as to the relation between the Committee and the Allies. You can ask Gen. Oddone about this. (Advocate for the Defence indicates that Gen. Oddone will be called). A few days before Gen. Oddone's arrest we were all informed of certain conventional words, which were broadcast over the Radio from Bari or London. On 5 June I know armed men wearing the arm band of the Volunteers of Liberty, with the letters C L N, and with the stamp of the party. The bands were distributed under the care of the military detachment. Those depending on military detachment directly wore a tricolour band, those depending on the parties wore a white band. These were the two bands which were known to the military command, but there were also various other types of band not so closely controlled. Up to the 6th the patriots were armed, up to which date they were on duty. Bentivegna is a sentimental young man, and I believe that for his military efforts he had to become his own instructor, but he has succeeded in doing so. This activity was not in accordance with his character. I don't say he is impulsive and sentimental. I know he valued human life, and that life should not be taken except in a superior cause.

DECLASSIFIED
NND 785024
By NARA, Date

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I have been Director of L'Unità since the clandestine period, which began after 8 September. I claim that on the night of 6 June we published news to the effect that Battisti had been identified and executed by unknown gangsters of the party – this was what we got from our reporters. It was afterwards found to be inaccurate and a correction was published 2 or 3 days later. We published the correction because we had learned the truth. Our earlier account was based on hearsay of the streets. We believed the original story because there were armed attacks by Fascist bands during the night of 4-5 June, and there were known to be Fascist cars on the 5th. We might quite possibly have thought anybody leaving from our premises was a Fascist. There were numerous attacks on – people engaged in taking down posters. I don't remember receiving any communication from Lt. Battisti's H.Q. with reference to the article on 6 June. Possibly such letters would not come to me personally. Since then we have changed our location 3 times. [Copy of the newspaper L'Unità for 9 June shown to witness] Seeing this, I remember now that we did receive a communication from the H.Q. of the Finance Guard. I did not receive it personally. I saw the draft of the original article the night before. I have the last word as to whether an article should be published. It was based on rumours collected in the streets. I did not specify where the reporters were to get the information from. "Giustizia" in the article means that "justice has been done".

Rexd

I don't know who was the reporter who compiled the report. It was evidently a reporter's account, and did not go through the Editor's office. I can explain the error by the confusion there was in the office on 5 June.

AS.

DECLASSIFIED
Authority NND 785024
By NARA, Date

be were just com. of the clandestine. to period. It is obvious that our journalistic work was not perfect.

By the Court

[This is not noted – as the questions were directed solely to the conduct of the newspaper in publishing without verification such a misleading article].

Fifth Witness (Swan)

~~[illegible]~~ Signora ~~[illegible]~~ Bastianina Martini known, Via Orazio 31, Rome – housewife. About 3.0 p.m. on 5 June I was coming from towards La Sediniata Della Confinata, accompanied by my husband, on our way to an office nearby, to collect a case that he had forgotten that morning. I noticed a person going in the direction of Via Tre Cannelli, and as he went along the side he was tearing strips of paper from the wall. At a certain point a person intervened and made – by calling him – but I did not hear the words. Then the first person turned, and they started conversing in a way that seemed angry. I did not exactly know the first person was dressed. He had military boots, trousers, shirt, carrying something on his arm, and was bare-headed. He was not dressed as a civilian – but he was not dressed completely in military clothes. The strips of paper were in a kind of window – in the street on the wall of a house, at the normal height of a person. The other man was in civilian clothes, with long trousers. I had never seen either of them before. I could not distinguish them very well at the distance I was. I was distant a little more than the length of this hall. I was at the time going down the steps. There was another person standing by the man stripping the posters, and there was a woman near the second person. The second man approached

DECLASSIFIED
DLND 785084
By NARA, Date

and stopped to mean taking the posters down. The latter turned and they exchanged words of hostility. I could not hear what they said, but they behaved like two angry roosters. I saw in the hand of the second man an arm pointed — then I became frightened and precipitately climbed the stairs. As I was gaining the first steps I heard shots. In a hurry I continued home. It was the man in the military or semi-military clothes that I saw with the pistol. He made some very rapid motions and extended his arm against the other. Being then I turned round and climbed the stairs. My husband accompanied me. I cannot say exactly how many shots I heard — it was more than one, and more than 4 or 5. I thought the man who had his arm extended had fired, and then the other had responded. The first shots were clearer and more sharp, the others were a deeper bark. After that I stayed at home, as I had had enough of that day.

xxd

The distance I was away was not much more than the length of this hall. The military man was standing with his back to the centre of the street. He pointed his pistol at the other man about twenty feet, but I could not see on which side. The first shots were clearer than the later ones. The distance from the bottom of the steps to the corner of Via IV Novembre is about the length of this hall, or a little less. I was about half way down the steps when I saw all this. It was the first person, the military man, who pointed the gun. He was holding something in his arm, perhaps the pistol — I did not see exactly. It was in the left arm. He had his sleeves rolled up, and I saw nothing else on his arm. It was when he was tearing the posters that I noticed the coat on his arm. I cannot say that I saw the coat afterwards. The civilian was dressed in grey, and he had a tricolour

DECLASSIFIED
Authority NND 785024
By NARA, Date

band suddenly, they were in those days. I did not notice anything else special. I could not say how the third man was dressed — I could not say whether he was military or civilian. The military man had a belt on, but I could not say if there was a holster on the belt. I remember the armband of the civilian, which was red, white and green. It caught the eye. I did not see any beard. I did not notice the third man's clothes, because he was not doing anything. They did not give me the impression of being together — the military men and the third person — I thought they just happened to be near each other. I did not report what I saw to the police. I am here because ~~the~~ something happened to come to my home in connection with another matter, and then transpired that I could testify in this case. That was 10-15 days ago. After the scene I ran up the steps very quickly and I did not look round again.

No Question

By the Court

I think I recognise the accused, but I think perhaps he was not then so well shaved as he is now. I think I recognise Carlo Capponi as the girl I saw, but I am not absolutely sure. I recognise the accused as the man who was with the girl. I don't recognise anybody else before — my attention was not concentrated on the others, but only on these. I am sure I did not see that the second man (the accused) ~~had~~ had a weapon. I assume he did, because he had the armband — but I turned round too quickly to see his reaction, when I first saw the military man he was coming towards us, and turned when he was called. Then the two men had

DECLASSIFIED
NND 785021
By NARA, Date

this carrying sack. I cannot say I saw the military man produce the arm. As he had his back turned to I could not exactly see where he was pointing. He was not wholly back to me and we could see the extended arm. I could see the whole of the civilian's body, but only a third of the military man's body — by that I mean he was partially turned round. The third person was some two steps from the military man, slightly to the back of him. I could not see the front of this body, only the shoulders. I did not notice if he was armed.

(Adjourned 1730 hours)

19 July 1944
Court re-assembled at 0915 hours.

Sixth Witness (Sworn)

General Odone Angelo, Via Montevideo 22, Rome. I am a regular officer of the Italian army. My rank is Generale di Brigata. I had contacts with the military detachments of the parties. The parties had representative members in the military detachment, for the purpose of establishing the behaviour to be maintained on the military front, both during the Nazi occupation and during the time after the Nazis left. At the time when General Ambrosio was Supreme Commander of the Italian army (in agreement with the Allies) I was second in command, and then when General Berardi succeeded him I was his Chief of Staff. Ambrosio was in command from January to March, and Berardi after that till 29 May. On that date I was arrested by the Germans and brought to Via Tasso. Precise agreements were made as to what was to be done with these military detachments in the common interest. The agreements were between me representing the military front and the representatives of the parties in the military detachments. The agreements covered the policy in the event of the Germans evacuating Rome without a struggle, in which case the agreements provided for the employment of an strength against the Germans. In this case this did

DECLASSIFIED
NND 785024
By NARA, Date

not come clear, the agreement provided for the maintenance of public order during the period of change from one occupation to another. When I say Germans, I include also the Republican-Fascist armed press with aggressive purposes against us. By preserving public order I mean securing maintenance of normal life against any disturbance. During the period of ~~[illegible]~~ entry of the Allies I was under arrest, and had no contacts with the military post. I can give you a general idea of the order in the event of a German evacuation. There was nothing in writing, for reasons of security — only such notes were exchanged between me and the various parties. Of my own knowledge I do not know what happened to the military detachments after my arrest. I was arrested on 29 May. I was released, or rather came out, or down on 5 June — simply because the Germans had abandoned their posts. Our relations with the parties were excellent. The military clandestine post acted on the orders of the Italian Command. I have reason to believe that the Italian Command informed the Allied Command of what was going on and what was being prepared in Rome. I have reason to believe that the nomination of Generals Anselmi and Bencivenga was made with the agreement of the Allies. I do not of my own knowledge know of the existence of agreed passwords. I did not have charge of radio communications — so I do not know if passwords were given by Radio Angio or Radio London. In normal times I have never seen a Finance Guard on duty with an officer — but it might happen in abnormal times as these were. I do know the police orders well.

XXd

The military detachment was formed with the object of fighting the Nazis and Fascists, not for the purpose of fighting other enemies of the parties unless they were Nazis or Fascists. It was formed for military purposes, and for public order, and not for carrying out petty

DECLASSIFIED NND 785024 By NARA, Date

ventilation. The military detachment or had any one permanent headquarters — it held its meetings everywhere. I don't know where H.Q. was on 5 June. If I saw a man dressed in officer's clothes, but carrying his jacket, and in his shirt sleeves, with his Sam Browne belt on his shirt, I should regard him as an officer.

Rexd

The fact that I am myself an officer helps me to recognise another officer in such case. But I believe that the public can recognise an officer by his boots, belt and shirt. An officer without a blouse or cap might be taken for an N.C.O. Before 5 June an officer of the Finance guard could be distinguished from an officer of the militia, because the latter wore a black shirt. But an officer without a blouse could be mistaken for an officer in the Republican Fascist army.

Seventh Witness (Sworn)

De Tuddo Italo, Via Flaminia 19, Rome. I am a journalist. On 5 June about 1500 hours I was coming from the Piazza Sant' Apostoli on Via Quattro Novembre. Because of the heat I was walking and pushing my bicycle. Reaching corner of a shoe shop (called Bufferini) I heard some shots. From the direction of the shots I saw two persons facing each other. I was surprised mostly to see a military man with no a blouse and with sleeves rolled up. My attention was attracted by this. The other person was a civilian — I cannot precisely say how he was dressed. I vaguely remember that he was dressed in something grey. I did not notice whether he had any distinctive marks — many people were wearing bands that day. I did not know the civilian. He had his back to me. I did not know the military man. It was a very brief scene. I saw the two men gesticulating. I saw the military man produce a pistol,

DECLASSIFIED
NND 785087
By NARA, Date

put a bullet in the chamber and prime it. It was pouring more or less in my direction, I thought it was time to get out of the way. I turned my bicycle and went back the way I had come. I could not see what type of weapon it was. I did not see if the civilian was armed or not. It seemed to me that he had his hands motionless, perhaps at his sides – at any rate he was not waving them. I was in a hurry to get out of the way. I jumped on my bicycle and rode off. As I rode down the hill I heard shots – I cannot say exactly how many, but they were numerous, perhaps 5 or 6. I cannot say if they all came from the same weapon. There were a few people in the street. I believe there was a woman there, but I cannot specify who was there. I could not now recognise the man or the woman.

xxd

The military man was with not a horse. That was something strange to me – because in the Italian army we are very formal. I did not see the civilian do anything while the military man loaded his pistol, but I do not exclude the possibility that he did. A few days ago I started working for "Il Tempo". Previously to 5 June I had been unemployed for 9 months. I do not belong to any political party.

No Rexkin

By the Court

I was pushing my bicycle in the street, on the left side, in order to have the traffic facing me. There was normal traffic. I don't remember the traffic particularly – it was normal. I don't remember any stationary vehicle. I don't remember if there was a stationary jeep at the corner – it would have been no novelty. There was nothing on the first corner where I was. If there was a vehicle waiting to turn left into Via Tre Cannelli it would not have interested me because I was stopped.

DECLASSIFIED
NND 785074
By NARA, Date

from certain win on on the wall. I saw a young man come up and I had the impression that he addressed the one in grey-green. I thought the man in grey-green was a military man, but he had no blouse. I did not know him — but I know now his name was Barbarisi. The other young man I recognise as the accused, although at the time he seemed darker and more sun-tanned. Barbarisi was in shirt sleeves. I did not notice if he wore any distinguishing marks. Near Barbarisi I believe there was a civilian. Accused was followed by Sciamina. I saw accused and Barbarisi talking animatedly. At a certain moment Barbarisi took out a pistol and pointed it at accused. I don't know if accused was armed, because at that moment my wife, who was very frightened, invited me to turn back — she had already begun to go up. I did not notice what accused was doing with his hands. As soon as I turned towards the stairs I heard shooting. I heard some 5 or 6 shots. I did feel that the shots had a different tone. My wife and I went up again & returned home.

xxd

I could not tell what the two men were saying. I saw the military man point his pistol at the accused. I then turned round and descended the steps. During the conversation the accused was gesticulating with his hands. I believe the accused was dressed in dark clothes, and I think his shirt collar was open. The young woman was in a light dress. I cannot say exactly how the other civilian was dressed. There appeared to be two groups of shots. I believe the first was the louder group. I did not report what I saw to anyone. I put him the story to the Avvocato when I met him. I never reported to the police. I met the Avvocato about 15 days ago to discuss certain questions about my la-

DECLASSIFIED
NND 785024
By NARA, Date

Further XXI. (the house)

The two men I saw were near the place where the Street makes a zig-zag, and becomes narrower.

Eighth Witness (Sworn).

Giuseppe Carmia, Salita San Nicola da Tolentino, Rome. I am a professor in the University of Rome, in the faculty of Contagious Diseases. I belong to the Democratic Christian Party — now called the Popular Party. I am Rector of the University of Rome, appointed by Col. Poletti. I have known accused many years. I am on friendly relations with his family and parents. I first saw accused 5 or 6 years ago when he was ill. I have always had the impression that he was a young man of conscience, fine character. Since his illness I have known him to be a medical student, and have had occasion to observe that he was a young man of much discipline, studious, generous, enthusiastic, both in his medical studies and in his political movements. His enthusiasm sometimes created a notable spirit of sacrifice. He was always ready to compare himself with my danger. During the Nazi occupation I frequently saw him. Often he was pursued to hide, and at times he would come to my clinic to satisfy his hunger.

No xxtion

Ninth Witness (Sworn)

Ignazio Domenico, Via Orazio 31. I am Director of the National Institute Del Infortunio — a state insured organisation for insurance against accidents. I am husband of the fifth witness. On 5 June about 1500 hours I was going down the staircase of Via Condotti, with my wife, on my way to my office in Via Quattro Novembre 144. While descending the steps I noticed a young man in grey-green who was talking with some sixty, fifty years of age

DECLASSIFIED
Authority NND 785024
By NARA, Date

situation. I was talking to him of what had happened on 5 June, and I mentioned this case. I met the Avvocato (Avv. Pecis) for the first time that day – he was indicated to me. I knew him by name before that.

No Reaction

By the Court

I did not look back till I reached the summit of the stairs. I turned round hastily and saw a group of people who had already gathered at the spot. He was about half way down the steps, when we decided to go home. He went up the stairs as fast as we could. He had about 25-30 stairs to climb. It would take more than half a minute. By the time we got to the top and I looked back there was already a group of people. On Via IV Novembre vehicles were going by. I cannot say whether there was one standing still. The accused arrived from Via Quattro Novembre, coming from my right side. The young woman walked next to his side – I cannot say on which side. I noticed these two because ~~they~~ there were very few people in the street. I do not think accused had anything in his hand before he addressed Barbisio. While the two were having their argument I could see only part of the body of the accused, especially the left part of his body. I did not see anything in the accused's hands during the argument – I saw him gesticulating during the first part of the argument. The Avvocato came to see me about the Institute. The conversation about this case was incidental. The Avvocato came to me for information, which he had to obtain for a newspaper. It was 15-20 days ago. I could only see part of the body of the accused, because the rest was hidden by the military men. I think the incident happened about 3.0, perhaps a little later. It could not possibly have been earlier than 2.30.

(Adjourned 1245 – 1430)

DECLASSIFIED
Authority NND 785074
By NARA, Date

Tenth Witness (Sworn)

Sonnino Camillo, Via Nazionale 181, Rome — merchant.
On 5 June about 3.0 p.m. I was in a school near the Via Tre Cannelle, where I had been hiding for nine months to escape the Germans, as I am a Jew. That afternoon we were having a dinner in honour of the liberators. We heard some shots, about 3.0 p.m., I cannot say exactly. The school is in Via Tre Cannelle, and from the terrace I could see part of what happened. It is below the crossing of Via IV Novembre, and is looking towards the windows of L'Unità and the stairway to Via Condotti. The pistols shots came from outside. I got up and went to the terrace and looked out. I cannot say exactly how many shots I heard, as I got up soon at once, and I was unable to count. There were definitely more than 3 shots. When I looked out I saw an officer on the ground, in a shirt with rolled up sleeves, his legs a bit spread out: I did not notice a cap. I also noticed a soldier of the Finance and a civilian. The soldier had a heavy case in one hand, and with the other he was putting back the officer's pistol into the holster. The terrace I was on is immediately over a cinema — it is about 5-6 metres high. The civilian disappeared from my sight, because he crossed the street.

(After discussion it is agreed to admit, for what it is worth, the evidence of this witness as to the effect of a conversation he had with the guardia di Finanza — see R.16).

I asked the Finance Guard what had happened. He answered that an officer of the Finance had been killed. I asked him why he did not bring aid, because it seemed strange that he did not. I did not know whether the officer was alive or dead. He did not answer, as at that moment a priest came out stopped to speak with him. The Finance Guard was about a step in front of the civilian. The civilian then turned back around the Finance Guard and his-

DECLASSIFIED
NND 785014
By NARA, Date

appeared from my sight. I saw the Finance Guard was putting back the pistol into the holster. I was the first to look at, then after a few seconds my Father joined me.

XXd

The School faces three Streets, Via IV Novembre, Via Tre Cannelli, and Via Cadmatta. It is a High School, and I had been for 9 months — my Father who was building there. The Terrace faces Via Tre Cannelli immediately above the Cinema Nazionale. The first thing I saw when I looked out was the officer on the ground. I didn't see the accused — because I did not know him. There were people there. I saw no one with a pistol in his hand. The officer lying in the street did not have a pistol in his hand — but I cannot be positive because the distance did not permit me to see if the officer had anything in his hand. The Finance Guard was putting the pistol into his own holster, not the holster of the officer. I did not report to the police what I had seen. All witnesses above the officer were taken he had his sleeves rolled up, and coat over his arm, but I saw nothing resembling an arm band.

No Question

By the Court

When I saw the Finance Guard he was in Via Tre Cannelli outside a tailor's shop where he had business. He was going up the Via Tre Cannelli. I don't know where he got the pistol from — for all I know it was his own. When I first saw him he was walking away from where the officer was lying. He was then some 6-10 metres from the officer. I was there in the terrace roughly in the time it takes to go twice the length of this room. The shots ended whilst I was on the way. I did not see anybody else with a weapon, and I saw no weapon lying about. I looked at the dead officer, but my attention was distracted by the Finance Guard. I did not see a pistol lying in the

DECLASSIFIED
NND 785024
By NARA, Date

street close to the " à office's head. There may have been one there but I did not notice one. I stayed there for some time, I cannot say how many minutes. I cannot remember a jeep driving up. I did see an officer — I think he was British by his hat — who approached the body and took photographs. He arrived in a car — I believe a Jeep, but am not sure. I only saw the Officer — I did not see any soldiers with him. It was 5-10 minutes later, maybe 13-14 minutes.

(Case for the Defence).

Prosecuting Officer applies to call a fresh witness who has been discovered since prosecution's case was closed.

Court rules that witness cannot be called in rebuttal under Rule 9. Court invites Defence to state whether they object to witness being called by the Court under Rule 9(E).

Advocate for Defence objects.

Court rules that witness be heard and examined by Court.

Witness called by the Court (Sworn)

~~To~~ Maccione Antonio, Guardia di Finanza, Via Labicana 9, Rome. I am a member of the Finance Guard. I was serving as such on 5 June, though I was not on duty. On the afternoon of 5 June I was walking on Via Tre Cannelle when the incident of later. Bebrisi happened. I had never seen him before, and did not know him. I cannot say the exact time, but it must have been about 1430. I was walking along Via Tre Cannelli going to the Barnabites. I was going up the hill in the direction of S. Maria Maggiore. I was coming from Piazza Venezia. I was in the part of Via Tre Cannelle that goes up towards the stairs. At the moment I was passing I saw an unknown officer, with trousers striped with yellow, leaning

DECLASSIFIED
NND 785084
By NARA, Date

some posters. The officer was in V. Tè Cannelle. The posters were exposed in certain open windows, on Via Tè Cannelle. I was on the right side, and the posters were on the left side. The officer was 8-10 paces away from me — just across the road. I don't know what corps the officer belonged to, but he had an armband, a white band with black letters, on his left arm. I thought he was a police officer. He wore a yellow band on his trousers, and I inquired he was an officer of the Finance Guard. He had a pistol in a holster on the left side of the belt. He had no hat. He had a jacket rolled with the lining inside out, which he was carrying rolled over his left arm — the lower part of the arm. The arm band was on the other part. His appearance seemed strange, and I was surprised that he was not wearing a hat. I don't think he had been drinking. While I was going on my way I heard a shot. Hearing this I turned round and saw the officer falling well towards the ground, crouched with extended pistol continuing to fire. I had seen Bertiegna when I was passing the door of l'Aiutò. The next time I saw him was when I turned round on hearing the shot. I was just above the turn of the street when I saw this. Before hearing the shot I heard no shots. After I turned round on the first shot, I heard 3 or 4 more shots. Bertiegna fired them all — he was the only person who fired. I can swear to that. There were 2 or 3 other people there — civilians — but I saw no arms. I don't know whether the Lieutenant got his pistol out, because on the ground I saw no pistol. Seeing the dangerous conduct of Bertiegna I went to report to my superiors, continuing ahead towards S. Maria Maggiore. I could not render assistance to the officer, because assassin was still there, pistol in hand, until such time as I disappeared. That prevented my going to help — also

DECLASSIFIED NND 785024 By NARA, Date

because I was his uncle. I had no pistol on my belt. I don't remember if there was a Jeep with Americans in it. I did not say anything, and Bertinaria said nothing to me. The pistol was pointed at the dead man, and I was in that direction too. I could not approach him to see him anything. When I saw Bertinaria at the door of L'Unità he was standing there looking into the street. He was alone at that time. I did not see anything in his hands. I could not see if he was armed. I was walking along the street, minding my own business. I said the dressed looked like a "Carabiniere" officer, because I could not distinguish whether he was an officer. He had the tunic, pants & boots of an officer. The first thing he was leaving the position was the thing that made me suspicious.

(Adjourned 1730 hours)

20 July 1944.
Court re-assembled at 0920 hours.

xxd Lt. Sabatino

When I saw the Carabiniere leaving from position I was directly across the street from him. I just turned my head to look at him and continued walking slowly. I did not look at him again till I heard the shots. When I heard the shots I looked round again. I turned back a few steps and I saw him fall back to the ground. I saw a civilian with a gun in his hand. Before I heard the shots I did not hear anything else – I was absent-minded at the time. I did not say anything to the civilian. I was a little frightened as Bertinaria looked so threatening. I thought it would be impossible to approach and identify the wounded man and Bertinaria. I was dismayed and I thought I too might be killed. I went for my barracks, hoping that on the way I should meet an officer, who could help in the identification. Being unable to find an officer in the street, I had to go right to the barracks where I reported the facts to my adjutant.

DECLASSIFIED
NND 785024
By NARA, Date

I was away that day, because that morning I met a fellow countryman on Piazza Vittoria. I was approached by 5 soldiers who asked me to show them my pistol. I showed it to them, and they got it in their possession and ran off. That is why I was unarmed that day.

XXd Avv. Penis

That day I came out of hospital and went to a house of friend. Then I ate and went slowly to my barracks. I came from Corso Vittoria, by Piazza Venezia, along Via Quattro Novembre to Via Tre Cannelli. After the scene I met no one else on Via Tre Cannelli. I was walking alone. It took about 30 seconds to get out of Via Tre Cannelli. I was walking fast. At some points I ran, but I was stopping to see if I could find anyone to bring aid. It is 30-40 metres from the scene of the shooting to Via Tre Cannelli. I covered that in about 30 seconds, but there was traffic and I had to cross. The rest of the street was deserted. The other people I saw were below. There were 3 people in the direction where Barbarisi fell — I am speaking after the incident. I did not approach these three, because I did not know them and did not know their intentions. I did not speak to anyone, and no one spoke to me in Via Tre Cannelli. I was dressed that day as I am now — with nothing in my hand. I was wearing a beret, and not the planned hat. Immediately after I was disarmed I met a upper ranking superior. My legion is at Santa Maria Maggiore. It is about 1 - 1½ km. from Via Tre Cannelli to there. In that distance I met no police officer. It was about 10.0 a.m. when I was disarmed. I was then coming from my barracks. I reported immediately to my superior. They did not give me another weapon. I had no weapon in the afternoon. It would have been useful to have me, as I could have acted in the case of the

112

DECLASSIFIED
NND 785074
By NARA, Date

incident of Bari again. If I had found him on the ground and would have handed it in to my commander. I went to the hospital in the morning for treatment, after I had reported to my superiors about the loss of the weapon. I was being treated for bronchitis. The hospital is in Villa del Re. After leaving the hospital I went to my sister's house, in Via Cavour, to eat. I went there about 11.45. I stayed there about half an hour. I was without my weapon then. Leaving my sister's I stopped for a while in Piazza Navona. I then went to Palazzo Braschi. Then I went through L'Arco Argentino and on to Piazza Venezia, afterwards on to Via IV Novembre.

I was 7-8 paces from Barbarisi when the incident happened. Barbarisi was carrying his jacket rolled on his left arm. I remember it was the left arm, because I saw the band of watch, which is worn on the left arm. He was wearing a shirt with long sleeves. I noticed the band on the shirt. At first I was surprised, but then noticing the gold-stripes on his trousers, I concluded Barbarisi was an officer in the Finance Guards. Before 5 June officers were authorised to wear shirt-sleeves, in public and on duty. I was going to my barracks for reasons of duty. The hospital is called Gallicano.

Lt. Tamaro Aldo (recalled by Court)

There was a holster on Lt. Barbarisi's belt. When I saw Barbarisi's body afterwards, I did not see his pistol. I looked around on the ground but found nothing. We only arrived some 2 hours after the incident. I am sure by definitely that the pistol was not in the holster, which I saw was open and empty.

Castelli Alberto (recalled by Court)

As soon as I heard the news I hastened to the scene, on foot. My H.Q. is about 200 yards away. I cannot exactly know how long it took, or how long after the incident I got

DECLASSIFIED
NND 785024
By NARA, Date

there. I - met the deceased was armed, because he had a belt. I did not see if he had a holster. Where the holster should have been was covered by a coat, and I remarked nothing. I cannot say either whether there was a holster or, if so, whether there was something in it. There was no pistol beside the body, either in his hand or on the ground. I did not look for one, but if there was one lying about I should have noticed it, as I walked around the body. When the incident happened there was no crowd, but there was a crowd in the vicinity. I did see a man on the scene who had a pistol, but I cannot say if it was his own or the deceased's. He was a civilian, but he had an armband, and one with the letters VL. That was the accused. With the accused was a blonde young lady who had a pistol, but not in her hand - inside the belt. I cannot say if this could have been the pistol of the deceased, or I did not examine it. The pistol was just tucked into her belt. There was a third armed person, but he had a rifle and I don't know if he also had a pistol. So far as I know those were the only armed people on the spot. I saw nothing of a Jeep in the neighborhood. I saw no American officers on the spot. But there was a group of people on the corner of L'Unità Building, and another group on the opposite corner. There was one member of the Allied forces in the group at the corner. I saw no marks of soot. He raised to his eye something that looked like a camera and took a picture. I had never seen Colantonio Ovidio before he gave evidence here. He certainly was not on the scene when I was there - but he may have been in one of the groups at the corner. I don't know if there is a Bar in Via Tè Cannelli. I did not see a Jeep standing anywhere in Via Tè Cannelli. I was on the scene for about 20 minutes approximately.

12

DECLASSIFIED
NND 785024
By NARA, Date

xxd Avv. Nicol.

There might be a door on the upper part of Via Tre Cannelli, and there might have been a peep there – but I never went beyond the corner where the road makes its sharp turn.

xxd Lt. Sabatino

I think the pistol the lady had was a Beretta – an Ordnance type, large size. It is the type normally issued by the Italian Army.

Carla Cappuzzi (recalled by Lawr)

I remained on the scene of the shooting for about 20 minutes. When the Lieutenant fell, the pistol was in his hand. Then he raised his hand a bit, thrust his arms forward – then he brought his arm to the height of his head, opened the palm, and the pistol fell to the right side of his head, near his hair. It remained on the side of his body for some time – 5 or 10 minutes. Then I went away from the spot for a bit, by order of the Finance Guards who had arrived on the scene to keep public order. These Finance Guards have not been witnesses in this case. I returned later, in the time it takes to go up the stairs to Via Cavalletti and return. When I returned the pistol had gone. I cannot say who had taken the pistol. I asked the 3 Finance Guards and a policeman in civilian clothes with an arm band, and none of the four could tell me anything about it. There were many civilians there, especially many soldiers. I did not have an arm till immediately after the incident. But then 3 young men who had arrived just over the mountain came on the spot. Afterward told them to go back to duty, but one of the three gave me a pistol. I have already testified about this to Capt. Greenhill. It was a Beretta 9. It is not right that I had a pistol at the time of the incident. (Cavalli Alberto is brought into Court). I don't remember seeing this man before.

64.

DECLASSIFIED
NND 785024
By NARA, Date

I do not see, see him. Nobody in an official position under the Patriots' organisation came on the scene and questioned me shortly afterwards. No — (question misunderstood)
A civilian with an armband did come up and ask questions.
It was not Castelli Alberto, but a policeman in civilian clothes who arrived immediately after the incident. I did not take his name. He has not been here to give evidence.
I am surprised at that. I should know him again.
It was not Colantonio Ovidio, the Brigadiere who gave evidence here. I recognised him in Court, recognised him as one of the first who arrived on the spot. I don't remember when he did when he arrived. I don't remember if he arrived alone or with anybody. Often I remember seeing him he was on foot. Right away I did not notice if there was a car. After a little I did notice a stationary car, from which an officer got off, who took some photographs. He was Allied, but I don't know whether American or British. I cannot remember exactly where it was, but it was very near the ~~incident~~ scene of the incident.
The vehicle was a Jeep. I only saw the officer when he took the photographs. I do not say he came out of the Jeep. I only saw him when he tried to take photographs. I approached, but he told me he was a police officer, and I let him take exposure. I did not notice if anyone was in the Jeep. I spoke a little English. I spoke to the officer in English. I don't think the Brigadiere of Carabinieri was dressed F2 Benigno.
I think he was in civilian clothes.

xxd Atty. Pecis

(Statement of Witness called for, which admissible by the Court, and put in marked Exhibit 4).
No other questions.
xxd Lt. Sabatino.
I remember that Colantonio Ovidio was in civilian clothes.

DECLASSIFIED
NND 785024
By NARA, Date

Had he been in my room I should have a bad one. But I cannot tell you any more as to how he was dressed.

By the Court

The statement was taken in Italian by means of an interpreter. The English was retranslated by the interpreter into Italian. I corrected one or two words and then I signed. It was the English translation. I was frightened. I did not remember the story. My answers were reduced to writing. I am satisfied that the statement does represent what I wanted to say. I was called before Captain Grunthal on 24th or 27th. I was not arrested. I was invited to go there, and I accepted the invitation.

DECLASSIFIED
NND 785024
By ... NARA, Date ...

The Court directed that it would not require argument from the Defence on the first three points enumerated by the Defence in opening, but that the argument should be directed to the remaining seven points. It was agreed that the Advocate for the Defence should address the Court in Italian, the Court calling for interpretation only where any member failed to follow the thread of the argument. An application by the Defence for permission to have the last word was refused. At the request of the Defence the Court adjourned till to-morrow morning.

(Adjourned 1230 hours).

21 July 1944.
Court re-assembled at 0920 hours.

Lieut. Sabatino
Within the last half hour a new witness has reported to me, who claims to have been an eye-witness.
Court, after hearing the Defence, rules that the witness shall be called & examined by the Court.

Alessandro Virgilio di Cesare (Sworn)
I reside at Via Di Pastini 133, Rome. I am a florist. I came to Court this morning, because I read in the newspaper that you were looking for a photograph taken by an Allied officer, which showed me with a rifle at the scene of the incident. I have no such photograph, but I know that an officer took me at two pistols. I don't know who the officer was, but he was an Allied officer – I cannot say if he was British or American. On 5 June ~~[illegible]~~ at 2.35 I was in Corso di Via Tre Cannelle 122 Via IV novembre, just beside shoe-shop of Battaini – that is the same as L'Unità building. I was on duty waiting for my captain who had ~~[illegible]~~ gone to see another captain in a nearby building. I belonged to General Bencivenga's forces. I was a Sergeant Major. I was dressed in civilian clothes with an armband – ~~[illegible]~~ a white band with a tricolour centre, marked "Polizia".

67.

DECLASSIFIED
NND 785084
NARA, DATE

It was issued by a Captain on the afternoon of 4th June. I belonged to a different organisation from the accused. I don't know Castelli Alberto. My organisation did not belong to any one political party. It was composed of elements of the Army. I was mostly in the Army. Our job was to seize the Barracks here — my Captain with 8 men was to seize it on afternoon of 4th and hold it until the Allies arrived. On 5th an Allied officer arrived and took over, so we went away. At 2.35 p.m. I was not on any particular job — I was just waiting for my Captain on the street corner. I was standing with my back to Via Tre Cannelli. I heard 2 or 3 people talking in an agitated way, behind me some 15 metres away. I could not hear what they were talking about — they were men. I turned immediately. When I turned I saw — young man dressed in grey, with his back to me, who was pointing a pistol and firing. As soon as I turned he began to fire. He fired 3 or 4 rounds. He was shooting at a military man without a coat. The military man was facing the civilian with his front facing me. He was 1-1½ metres from the civilian. I did not know who either of them were. I would know them again. I recognise Bentivegna in Court — he was the one who fired. I recognise him because afterwards I stopped him. I believe the military man was without a cap. I could not tell what organisation he belonged to. At that moment when I ran to the spot I did not see any arms. I did not see any later. I looked around and did not see any arms. I did not notice if he was wearing a belt with a holster. I did not look — I only looked round the body. I did not see any arm on the ground around the body. He had no arm in his hand. He appeared to me to be a completely unarmed man. There were

DECLASSIFIED
NND 785074
By NARA, Date

Some people ran, we may, but attention was fixed on these two. I cannot say whether any of the others were fleeing past. Nobody else fired. Bentivegna was alone. I recognize Carla Capponi – she came to me when I was with Bentivegna, as soon as I stopped him. She was coming down from Via Tè Cavalieri. I cannot say if she was there at the time of the shooting, nor whether she was with Bentivegna at that time. To me Bentivegna seemed alone. I was a little perplexed, but then I began to turn towards the scene, and I stopped Bentivegna. He was coming towards me with weapon in hand. He was coming away from the scene. I stopped him by asking if he had gone crazy. He said "He was tearing down the posters of L'Unità". He made a gesture to give me the weapon, and then drew back and said "No, I will not let myself be disarmed". I said "That's quite all right – put it back in your pocket". As soon as he put it back Signora Capponi approached us. She was armed with a pistol, carried in a belt. I asked him Bentivegna and then Signora Capponi for their documents. Bentivegna told me his documents were false, because he was being sought for. Signora Capponi had no document. I asked what duties they were performing, & Bentivegna told me he was doing duty for L'Unità, and I took the no. of his contract, 6577. Signora Capponi had no card. Then I accompanied them to the newspaper L'Unità. Before going, I saw there a stretcher bearer with an hands similar to mine, and I had the people drawn back from the scene. 2 or 3 companions of Bentivegna participated in this. As soon as I stopped Bentivegna I went towards the body, and at that moment the man died. It was then that I took to see if he had an arm. I don't think anybody touched the body before me. I did not see a pistol near

DECLASSIFIED
NND 785024
By NARA, Date

his head. If I had been not there I think I should have noticed it. Before I went to the newspaper office a jeep arrived, and an officer got out and took some pictures. It was some minutes after the shooting, say 1 - 1½ minute. After taking the pictures the officer went away. I don't think he took any further interest. There were 2 or 3 other people in the jeep. A priest came and knelt beside the body. On the way to the newspaper office I met a Maresciallo of Carabinieri in uniform, and I asked him to take an interest, but he said he had to go to report for duty. When I went away the body had been covered by a sheet. I did not meet Bentivegna since I did not know the circumstances, Bentivegna was wearing an overcoat, and in my case I am not an agent of P.S. When I got to L'Unità office, I asked who was in charge, and a gentleman called Terenzi presented himself. I made a report to him on what had happened. Terenzi did not put him under arrest. I left them there and came away.

xxd Lt. Salvatico.

Bentivegna came towards me, pistol in hand, and he said "~~[illegible]~~ Romans (or Italians), so die traitors to their country." He said this to the world at large. I did not hear any shots before I turned round. They seemed to be a succession of shots. I cannot say how far up Via Tre Cannelle Giovanni Coppini was. I did not say anything to the dying military man. He did not appear to try to say anything to me. When he fell he tried to get up, but fell back to the same position. I saw him fall in the first instance. I did not notice anything in his hand. He drew his last breath before my eyes. I made a report to the Allied Command officer I first saw. I first went to

DECLASSIFIED
Authority NND 785074
By NARA, Date

Commissione, Naples Naples, and I with an accompanying letter from the Commissione I went to Piazza Vanvitelli in. I was told by an Allied Sergeant it was too late to return running and I was to come back at 1430. It was some time 4 Sep. later Commissione Naples Naples is a District H.Q. & Public Security. When I went into Piazza Vanvitelli, I found Buttiglione. I also found a Public Utilities Italian police officer, and he started writing my report, and he asked for a typed copy. The girl typist said she would not type it as she had little work. Then the Captain & Buttiglione went to report in. Buttiglione & the P.S. officer came to the Captain later. The P.S. officer asked for my statement. I gave him my statement, translating it into the Captain, & was told he returned. I asked for a copy & a receipt for it - but the officer said the Captain said they was unnecessary. I said that the accompanying letter. I waited for half an hour while they were drinking their tea. I called the interpreter & asked him to turn in the letter & ask the Captain what I was to do & wait if he returned. Captain said the Captain thanked me & told me I could go if he wished me.

xxd Aug. Penna

On 5 June, at 2.30 - 3.0 p.m., I was in lines & via Tre Carrelli via Quattro Novembre. I was standing still, and alone, waiting for my Captain. I was alone for about 10 minutes. I was standing still on the same point, moving a little and turning & looking more or less in the same direction for the time, waiting the Allied troops in the Quattro Novembre. I saw the usual people going by & Italian Buttiglione passed by, I met Buttiglione going

75. REGION IV CASE No 7762

DECLASSIFIED
NND 785084
By NARA, Date

I heard an indistinct conversation — voices, — I raised I heard 2 or 3 people, probably even four. It was a Fascist, not a policeman. After firing Buttiregna stepped on the sidewalk with pistol in hand, and immediately afterwards came towards me. He came towards me spontaneously. I was about 10-15 meters from the scene of the incident. He did not talk towards me. I was going in a fast step towards him. I saw him at my left after passing the body. As soon as we met we spoke. The first thing that came to my mind was to stop Buttiregna. Then he came with me to the body.

I was wearing a black hat with a tricolore strip in the middle. Buttiregna's hat was totally tricolore. I was visibly armed. I had an automatic rifle. Perhaps Buttiregna took me for a policeman, perhaps not. I asked him for his weapon. It was then that Mino Coppini came up. I could not order him to I was alone. The municipio signed to him. I did not declare Buttiregna to be in a state of arrest, or in a state of "fermo". If it was possible I should have held him. I did ask him and Mino Coppini for their names. Accurso did not show me his police documents, but he told me who he was. We still had not gone to the body of Barbarisi. It was 35-40 seconds from the shooting to the time when I actually met Buttiregna. From then till I went on to the body was 20-25 seconds. It might be more, I don't know how much time. Along a distance we passed and I cannot remember how long it was. It might be 1½-2 minutes. Barbarisi was wearing a grey-green shirt — I did not notice anything in his pockets. I don't remember how his sleeves were. I did not recognize if he was an officer. I don't remember if he was left handed. I approached the body, in

REGION IV CASE # 7185
7E.

DECLASSIFIED
NND 785024
By NARA, Date

seemed. — Yes. When I arrive, I do an estimation, but
then in my position I can't give a notion. I did not
notice that Bartolini was in another. I did not see one.
I did not examine Bentivegna's pistol. I did not take
it in my hands, I don't remember if he showed it to
me. I don't remember if he showed me the missing rounds.
I don't know who picked up the shells from the ground. I
did not touch the body, no more is about it. I ~~[illegible]~~ don't
slightly on the body. I did not think by examining the
body. I did not notice if Bartolini had a holster — or a belt.
I did not check up on the pockets. There were few people
when Bentivegna and I arrived, on the body. On arrival we
cleared them away. No one was on the scene before me.
I did not see anybody around the body before me — it is
possible they searched it. I did not see my Fiancée
Guardo approach the body. When Bartolini was hit he
turned to the right — his back was towards me. He was lying
on his right side. There were people
towards L'Unità building, on the left side. It was
the shots that made me look round. Before the shots
I saw nothing. I don't know what happened to the
jeep after the officer took the photographs. I did not
see if the Jeep came back later. I saw the officer
giving towards the Jeep, but I did not see if he
got in. I reported to the Commissione Nuoro
Napoli in the same way as I wrote to A.M.G. I
wrote the same report to Captain Todd in the same way. My
Captain is Pallastrelli Filippo. He was my captain
2 years ago. He was not present on the incident.
I came here just to report. I accompanied Bentivegna to
the newspaper office. I agree it was only in the
23 that I reported to the P.S. or A.M.G. up.
to then I had reported only to my captain. I made

DECLASSIFIED
NND 785047
By NARA, Date

a written report of what is to say exp in 3-4-5 days afterwards. I came here to-day because I read in the "Avanti" this morning that there was a photograph containing a man with an attractive wife, and I am the only person so situated. I thought I had better come here. But for that article I should not have come.

Avvocato Pecis applies for permission to have Accused, Carla Capponi, and Colantonio recalled, also for permission to call Terenzi.

Mr. Salustro

I object to the case being reopened. But if I am told what they want to be asked, and the inquiry is limited to that I shall not object. I do not make any distinction between any of the four. But I insist that we should know beforehand what is to be asked.

(Adjourned 1230 - 1400 hours)

Court rules that at the present stage of this trial is cannot hear further evidence from Carla Capponi or Colantonio. But leave is granted to call the witness Terenzi, to be examined by the Court. Accused will be given the right to go back into the witness box and make a statement, restricted however to those matters which were dealt with in the evidence of the last witness.

Amerigo Terenzi, called by the Court, sworn, and examined by the Court.

I live at Via Doplino 15, Rome. I am in the commercial side of the newspaper L'Unità. I know the accused. I was in the office of the newspaper working that afternoon. I saw the accused that afternoon. I saw him several times. An incident took place outside our office that afternoon. I was not a witness myself. But the incident was reported.

DECLASSIFIED
NND 785084
By NARA, Date

I was in my office when I heard some shots. I went down stairs & saw people going towards Via Tre Cannelli, and I myself went outside and went in that direction. I saw a young man in shirt sleeves on the ground. I did not see the accused in the confusion. I did see the accused later that afternoon, about 20-25 minutes after the incident. I saw him in the office. There were several people there, including a Volunteer of Liberty who was asking for his identification. I recognize the last witness as the Volunteer of Liberty. I don't remember specifically who else was present. It was agreed by me because I was alone in the office, and it was agreed by me that someone had removed posters. The Volunteer of Liberty brought Accused to me to identify him. The accused spoke, and I was able to identify him. The accused told me that in the street he had seen a person fleeing from posters from the wall; that having incited this person to stop, the latter had resisted in an improper manner and he had drawn his pistol; that in order to defend himself he fired first — that is what I remember. The Volunteer of Liberty was present when accused told this story. I am quite sure the accused told me this story that day. The V.L. asked me if I knew accused, and if I could say that accused was guilty or not. I was able to identify the accused. The V.L. told me that as he was passing by he heard some shots; he told me that he ran and that he saw a person on the ground and asked what had happened; that he asked accused for his identity, and seeing that he had false papers, brought him to the office to confirm his identity. I remember that he did not tell me he had himself seen the incident. What he said was that he was passing at some distance.

DECLASSIFIED
NND 785024
By NARA, Date

xxd Lt. Sabatini

The V.L. when he came to my office was not particularly excited. I don't think he came in for any purpose other than to identify himself. So far as I could see there was no contradiction between the accused and the V.L. I don't exclude the possibility that the story might have been told in greater detail. There did not appear to be any contradiction. There was no particular reason why he should have given me a full, detailed account.

No xxtion by Defence

By the Court

I was not in Court here this morning, nor at any time during this trial.

Capt. Greenhill called (xd by Court)

I have not see Alessandrini Virgilio before this morning. His name conveys nothing to me. So far as I remember nobody came to my office or left a statement on 23 June. If a statement was left in my office relating to this case, it must come to me. I have searched the office to-day, and can find no such statement. I cannot of course exclude the possibility that such a statement is somewhere in the office — possibly in the wrong file — but I don't recollect seeing such a statement, and I should certainly have been glad to receive one in this case. I believe there was a military police office in the same building on 23 June. It is of course possible that the person bringing the document may perhaps have taken it to the military police office. It is not a thing that

DECLASSIFIED
NND 785024
By NARA, Date

has sort of experience. I have not made any investigations to see if this Defence has got other military police officer. Normally a person who has a statement for me will be shown in to me, and not left with the outer office. But this man came with an Italian statement, and I should have had him shown in to me, and would have taken my own statement in English. (Evidence of Alessandrini and witness) That does not bring anything to my recollection. I do not remember being consulted in any incident like that.

xxd Lt. Sabatino

Does he have any Italian P.S. agent in my office - called Rodriguez. I don't think I should take a statement like that personally in a case like this. No other Allied Captain took any active part in this case.

xxd Arr. Piccolai

I know the name Pantera. He was interested in this case, acting under my instructions. He was present at the interrogation of the accused. Pantera may have seen this man come with a statement, but I have not asked him. I have understood the Carabinieri began Napoli. I do not remember receiving any letter from them.

Accused recalled to make statement

I did not immediately move towards Alessandri, leaving the Lieutenant, but after a little time when Lieutenant was already on the ground. I went to meet Alessandri, because nothing an armed civilian I wanted to see whether appreciation he belonged to. I turn the Lieutenant. When I saw that had with "Polizia" on it I put myself at his complete disposal. He took my pistol in his hands, he examined how many rounds were missing from the clip, and he checked that 3 were missing.

DECLASSIFIED
NND 785074
By NARA, Date

As already stated, he told me he had 5 shots. When my companions did come out to take his pulse, I ordered them back to their posts. I and Carlo Lapini took care of closing house doors. Alessandri gave me back my pistol, which I then kept in my hands. I remember perfectly that on the day I was at the Allied Commission, waiting to speak with Capt. Guralnik, Alessandri did bring in a statement, which was read by Pancetta. I believe it was presented to Captain Guralnik. If I remember right, the agent Pancetta or the interpreter brought the statement in to Capt. Guralnik; it was on half sheets, folded and written on both sides.

xxd Lieut. Sabatino

I don't think I said "Italians, this is how traitors die". I don't remember doing so, and am almost sure I did not. I remember that the three guys, after a minute or two, began a search for the pistol. Many people went near the body, and I with others was to keep order and keep the public away. Alessandri was the first person to go near the body. I don't know who was. Alessandri treated me as a companion. I had not seen him together afternoon. I don't know what party he belongs to.

Resch

Alessandri and I went together by agreement into the L'Unità Building, and I remember talking to Terenzi. There were quite a lot of people there already.

DECLASSIFIED
NND 785024
By NARA, Date

Aw. Nice daj. sums up for the Def. ie.

You have to resolve any doubt in favour of the accused.
We don's put this case forward as an incident of war – but I believe it's true place in an atmosphere of war, & this affects the valuation of the conduct of the parties.

Although the Allies had entered Rome, normality had not yet returned to Rome, and it was not even certain that the last German had left.

It is a, negative, why Bartolini should in this day be guilty of an act so hostile to liberty as to tear down these posters. Accused's action was justified morally, politically, juridically. I don's say that this alone would justify acquitting, but it justify accused in being offended, and even in making threats.

But it is necessary to examine the action of Bartolini. This is a position in which there is a conflict of witnesses. You should accept the evidence of Carla Coppini. You should accept De Tuddo, who was completely independent, who has and has. himself, whose spontaneous action was so eloquent. Also the evidence of Colonnetto. It is not no fault that we could not support his evidence with that of his primary friend. Maybe there are curious features in his story – that is more curious than other things in this case which are generally admitted. There is no doubt Colonnetto's sincerity. There is plenty of conjecture that his fight with the American officer was true. The evidence against no case is not conclusive.

(Captain Greenhill answers having the missing statement, which he states has been found in the office, in the wrong file. Counsel notes that this is the Defence, who may not be in evidence if they elect to do so.
Defence after seeing the document elect to not be in evidence. Document received and marked Exhibit 5).

DECLASSIFIED
NND 785024
By NARA, Date

Adv. Nicolaj continues

The witness Castellana was evidently lying for some reason. You cannot believe her story. For one thing — on her story all three bullets would have hit Barbarisi. Even the evidence of this witness, however, supports my defence of legitimate Defence.

You must believe that Barbarisi had a weapon and was using it — otherwise there was no possible motive for the killing.

There is some mystery behind the evidence of Barbarisi. Why did he appear so late on the scene? If his present story is true, he would have been found by the police when they interviewed Tenerzi immediately afterwards. The original report, was produced, is consistent with my case, and shows that from the outset the case of the accused was that he acted in self defence.

It is quite likely that accused would be shot, from the hand of the Accused, whether he was killed or free, — his actions would suggest the latter. I do not think that he intended no harm by drawing his pistol.

(Adjourned 1900 hours)

22 July 1944.

Court re-assembled at 0910 hours.

Adv. Nicolaj continues

The experience carried out by accused in Court shows the extreme rapidity with which the events took place.

Homicide is dealt with in Arts. 575 and 584 of the Code.

There are 2 forms of homicide, intentional and preterintentional.

The idea of self defence negatives the notion of intentionally killing but admits that it provides a danger.

Homicide may be (1) voluntary
(2) Preterintentional (intending bodily harm)
(3) Colposo (negligence or imprudence)

Legitimate self defence does not apply to homicide alone, but to all acts which might otherwise be criminal.

Aggravating and extenuating circumstances (Arts. 61 & 62) apply to all forms of crime.

80.RT

DECLASSIFIED
NND 785024
By NARA, Date

Sinibaldi & Tamaitis p. 149 – which again – one thing is meant by "partisan" self-defence. I also refer to an Article by Prof. Stallybrass in "Il Progetto Rocco nel Pensiero Giuridico Contemporaneo", at p. 77.

In order to come to a conclusion you must put yourselves in his place in that situation. Nobody could have acted differently.

I ask you to remember the part Garibaldi played in assisting the Allies in the Partisan movement.

(In answer to a question by the Court as to what would be the position if Bentivegna had killed him and killed Bentivegna). That might be a case of "Reciprocal" Self-Defence, as suggested by the Writer Ferri.

Lieut. Salvatino sums up.

This case must be decided on the facts, not on the brilliance of the Accused's defence. There is considerable conflict of evidence in detail – though the general effect is the same. I don't say that any of the witnesses we have heard – this is the familiar case of a number of people seeing the same thing happen but getting different impressions of the details.

There are 3 possibilities:-

(1) Accused approached Garibaldi and fired without giving the warning shot first:

(2) Garibaldi turned round or dropped, who fired in self defence:

(3) Deceased turned round or moved, and the latter fired thinking he had shot fired himself first.

Accused acted because Garibaldi was leaving the postes, and he thought leaving should be treated in an exemplary manner. He thought he would have acted in a different way if he had seen the Garibaldi. This did not take the attempt was non-sadistic, and that the Garibaldi was in fetters. The fact that the postes were

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NND 785024
By NARA, Date

(In answer to a point in by the Court I Prosecuting Officer stated that he does not intend to prove "aggravating circumstances" under Art. 61 (10)).

As to Extenuating circumstances – I say that accused is wholly faultless, not substantially I only – Art. 62 (1) and (2).

My defence is based on s. 52 – I indicate s. 55 as a possibility. s. 52 is designed to deal with certain dangers, not to extend physical danger, and the question must be immediate.

I question that hope I can rely on s. 52 there must be actual necessity. This needs very delicate weighing, and must be viewed subjectively, as it appears to the mind of the thief in the light of surrounding circumstances, and not objectively in the cold atmosphere of the law Court – see Art. 59. Art. 52 would provide a good defence, notwithstanding that the Court considered the accused's actual culpability, in the circumstances that prevailed thereunto to him – the error, principle. The collateral legitimate defence Potestiva – it is covered by Art. 59 (last paragraph). But the accused's error must be a reasonable error. If he is guilty of unreasonable error, then it is a case of "culpa", to which we turn to Art. 55. This is considered by the Code specifically in relation to Self-defence, under Art. 55. Art. 55 applies only to cases of excessive Self-defence. In this case the punishment is fixed by Art. 589. Art. 81 action is limited by the limits set in the section – but in certain cases there is a power to suspend sentence (see Art. 163 and 164).

115

All this is standing, because I rely on legitimate self-defence, and not on "culpa". Legitimate self defence in the Spanish code is an "eximente" law. But I also refer to Pedro Maggiore, Vol. II, p. 320 (2nd Edn.), which contains a chapter dealing particularly with "Legitimate Defence Potestiva". I also rely on "Guiseppe Pietro" by

DECLASSIFIED
NND 785074
By NARA, Date

that of communist party is not important because it is a fact that both the accused personally. It does not follow that the man throwing down a communist posters is a fascist. Assuming the truth of the accused's statement does his action amount to self-defence. Self-defence implies that there is a peril which there is no other way of avoiding, and that the force used is no more than is necessary for the purpose. Because the deceased pointed a pistol it doesn't follow he was going to fire. In any case the accused had other ways of dealing with the situation, e.g. reasoning with him, seizing his pistol, if necessary firing at his legs. I fully appreciate the atmosphere in Rome on 5 June. Accused had no ground for thinking that deceased was actually going to shoot. Deceased had had an opportunity of shooting at early, and had not shot.

As to Italian law, the only extenuating circumstances that accused could possibly rely on are those in ss. (1) and (2) of Article 62. I say that neither of these sections do apply on these facts. The pulling out of the pistol by the deceased was not an "unjust act" in the circumstances, since being in uniform he was in authority. I submit Art. 59 does not apply – this applies only to an act which is prima facie lawful, e.g. one person giving another a push which unfortunately results in death.

In answer to Court's last question to the Defence, I submit that you cannot possibly have legitimate self defence on both sides. One must always be the aggressor.

By the principles of all civilised states the unlawful taking of human life is a thing that must be punished. If you think no other course was open to accused, you will acquit him – otherwise you must convict.

(The Court adjourned at 1230 hours to consider its judgment).

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NND 785024
By NARA, Date

Exhibit 1 to H. Q. Chart.

Am G/ACC.
H.Q.
Piazza Venezia,
Rome,
23rd June 1944

Statement of BENTIVEGNA, Rosario, fu Vincenzo, age 22yrs., Medical Student, of Via Torino, No 122, (apartment on second floor). Rome, who says:

I have been cautioned that I need not say anything unless I wish, but anything I do say will be taken down in writing and may be used in evidence.

Bentivegna Rosario –

I was a partisan in Roma and in the Country as from 8th September, 1943, when the Armistice was signed. At that time I was a Communist, in fact, I still am. I was arrested on 20th September 1941, in Rome by the Fascist Police on security grounds. I was taken to the Questura in Collegio Romano

Bentivegna Rosario

Statement

DECLASSIFIED
NND 785047
By NARA, Date

and was interrogated because they fo
out that I ordered on 5th May. 194
in distributing Anti-Fascist vill
They kept me for four or five days and
released on the condition that if I w
caught again circulating this propaga
within three years I would be
imprisoned. After about eighteen months
again started my Communist activi
~~During the eighteen months I~~ ~~had stopped again and~~ took up m
medical studies. In February 194
because of my age, I was call
up for the Army and was put into
Sanitaries Company, No 8. and remain
in Rome in the military Hospital a
Celio. I was there until May 1943,
I was released for an indefinite
period. I was still interested in An
Fascist and in July 1943, I again
[illegible] Communist Contac

RB.

Nathan G. Cart

DECLASSIFIED
NND 785024
By NARA, Date

Rome. my area was in the Center of Rome and I was the person in Command. I held this position until 15th november 1943, when I became involved in the G.A.P. which means Gruppo Azione ~~Patriotica~~ Patriotica, a Gruppo of the Communist Party, and was the Commander of the "Pisacane Squadr On 22nd January 1944, when the All landed at Anzio I was sent to Centocelle in charge of the Partisan there. In March I was recalled Rome and again took up my previo Command, and have been here ever s In may, 1944, I was sent out of Rome in charge of the Partisan between Rome and the Cassino fro

M. Gioli

DECLASSIFIED
NND 785004
By NARA, Date

4 to classify from RB

was on my returning when I was ob
by Fascist troops near the Pe t
Mammolo about 10 kilometers
outside of Rome on Via Tiburti
and owing to the fighting I ret
to Rome, and took up servic
my patriots in the San Lorenzo
district. On the morning of 5th Ju
1944, I was sent to guard th
building of the Unità newspa
in Via 4th November, Roman RB Rome, n
Via Le Cannelle. I arrived there
about 10.30 am. at about 3 pm
I walked into Via Le Cannelle a
a tour of inspection and saw
men, one in civilian clothes and o
in uniform, who was carrying ha
a
th

by Capt

DECLASSIFIED
NND 785047
By ... NARA, Date ...

5

tearing down posters from the wall near the steps leading from Via Tre Cannelle to Via 24th May, including posters of the Unità newspaper. I was with a friend named Carla Cattoni, a lady, who lives in Via del Foro Traiano, 1, Rome. Carla and I went up to men and I asked them why they were tearing down the posters. The man in uniform answered arrogantly, "I can do as I please. Who are you?" I replied, "I am a member of the Committee of Liberation" and showed him my armband, which I was wearing on my left arm. The one I hand you is the one I was wearing. At this moment the man in uniform pulled his revolver from the back of him put a cartridge in it and

Maria Cattoni

RB

DECLASSIFIED
NND 785024
By NARA, Date

struck the revolver in my body near the heart. I had my right hand in my trousers pocket, holding a loaded "Barretta" pistol, calibre 9 mm. (short). At the time the uniformed man put the pistol to my body, the man in civilian clothes fired two shots. I thought they were at me. I was not struck by them. I stepped back a few paces, drew out my pistol and fired three shots at the uniformed man. I thought all shots struck him in the body. The uniformed man then fell to the ground. The man in civilian clothes then ran away. I cannot remember which way he went. As I saw the man on the ground I then noticed he was a lieutenant of the guardia franquista. my girl friend was present.

Yusta Cam

RB

DECLASSIFIED
NND 785024
By NARA, Date

and she saw all that happened. There were people also at the windows of surrounding houses. I did not know the informed man or the man in civilian clothes. The girl and I kept the public back. Shortly afterwards a man, who I would know again wearing a white armband red, white and green in colour with "Polizia" on it, came up and asked ~~him~~ me what happened. I told him and he asked me for my name and documents. I showed him the Identity card and military licence and told him they were false. However, I gave the man my real name and address. I remained there for about ~~half or the~~ twenty minutes, and returned to the Unità building with the girl, Carla, and the man who had taken particulars from, and he verified my identity. I left Rome on

Statement of Capt

DECLASSIFIED
NND 785024
By NARA, Date

8

June 1944 and went to the Viterbo District. I stayed there until 19th June 1944, doing Communist work, and then returned to Rome. I hand you the false identity card and military licence. I gave my pistol, as a present, to an Australian Lieutenant who called at the Unità offices on 6th June 1944. I think his name was "PETTER". He was with the Fifth Army. They all know him at the Unità office. I last saw him about 19th June 1944. Carla had a pistol on her at the time. I do not know whether she still has it or not. I shot the Lieutenant because he had held his pistol to my body. At that

Fabio Cardi

106

RB

DECLASSIFIED
Authority NND 785024
By NARA, Date

I thought the Lieutenant was going to shoot me because he appeared very aggressive. At the moment I thought he was a Fascist, but I have since been told he was a patriot so I am sorry that it happened. Carla had nothing to do with the shooting. I carried the false identity cards and military licence because the Fascists were looking for me because of my Anti-Fascist activities and for no other reason. I have a good character. This statement has been read to me in Italian by Cpl Conti, 267th Regiment, Coy "L" and it is the truth. Rosario Bentivegna

Witness: Wm Gillenhall. Capt.
22/6/44

DECLASSIFIED NND 785024

220

15

A.M.G. H.Q.
Piazza Venezia

25th June, 1944.

Statement of Carla CAPPONI, aged 24 years, single, of Foro Traino, 1, Flat No.12, Rome, who says:-

I live with my mother at the above address. My father died four years ago. I have not been employed since last December because the Fascists and Germans were looking for me.

For the past seven months I have been a Communist and anti-fascist. I fact, I have always been anti-fascist.

I have known Rosario Bentivegna, who lives in Via Torino, Rome, for the past year. He has, so far as I am aware, always been anti-fascist and connected with the communist party. I am engaged to Bentivegna, but not officially because I have not known him long enough.

At about 2 p.m. on 5th June, 1944, I was at the offices of the Unita' newspaper a Communist organ, in Via 4 Novembre, Rome, when I was asked to remain and help to guard the building because we were afraid that Fascist elements might enter the place. Rosario Bentivegna was there in charge of the Guard.

At about 3 p.m. that day, Rosario, asked me to accompany him on a walk round the building. I agreed to. Rosario had a revolver in his right trouser pocket, but I was not armed. The two of us walked into Via Tre Cannelle, nearby, and when we turned into the street, I saw a man in Army uniform, with his coat over his left arm. I do not recollect whether he had a hat on. With him was a man in plain clothes. The man in uniform, I did not know what arm of the Italian services he belonged, was pulling down "patriot" posters, including those of the Unita' newspaper from the wall near where the steps lead up to Via 24 Maggio. I do not know whether the man in Civilian clothes was with the uniformed man, but I formed the impression he was. Rosario and I went up to the two men. Rosario asked the uniformed man to stop pulling down the poster and asked why he was doing it. The uniformed man replied "who are you to ask me questions". Rosario was wearing a "national Liberation" arm band on his left arm. Rosario pointed to his arm band and said " I am in charge of the Unita' newspaper guard, and told the man what the arm band stood for. Please come to my office and explain the reason". Both became very excited and shouted at each other. With that the uniformed man took a revolver from his holster, charged the revolver with a cartridge and stuck it at the left side of Rosario. No words passed at that moment between the uniformed man and Rosario.

The other man who was in civilian clothes stood at the back of the uniformed man. I stepped aside having seen the man in civilian clothes who was standing 4 or 5 meters away draw a revolver from his right hand trouser pocket. At the same time I called out "Attention" and moved quickly over to the wall opposite because I thought this man was going to fire. A few seconds I saw Rosario took a step back from the uniformed man and fire three shots at the uniformed man. Almost at the same time the man in civilian clothes fired two shots. I don't know whether he fired at us or in the airp but I had the feeling that one shot passed close to me. I then saw the uniformed man spin round and fall to the ground on his back. In the death spasms the uniformed

DECLASSIFIED
Authority NND 785024
By NARA, Date

dropped his revolver by his head. At that moment the civilian ran away in the direction of Via Nazionale. With that a man in civilian clothes wearing a police arm band came on the scene from the direction of Via 4 Novembre. He told Rosario that he had seen everything and asked Rosario for his name and address and other particulars. Rosario produced an identity card and said "this is false". Rosario still held the revoler in his hand. However Rosario did give the policeman his proper name and address. The policeman lifted the dead man's coat and then said that the dead man was a Lieutenant of the Guardie di Finanze. A crowd began to gather and persons from the Unita' newspaper were coming to the spot. Rosario told the latter persons to return to the Unita' building.

One of these men, I don't know his name, but they would know it at the Newspaper's office, handed me a revolver and I helped to keep the crowd back. At that time members of the Guardie di Finanze arrived on the scene. I recognised them as such because of their headware. They then took charge and Rosario and I went with the policeman to the "Unita'" newspaper office. I then handed the revolver I had back to the man who had given it to me. A man at the newspaper offices vouched for us to the policeman.

I cannot help you as to the whereabouts of the dead man's revolver because I looked away on the occasion to keep the crowd back and upon looking again at the dead body I saw that the revolver had siappeared. I asked the policeman and later the Guardie di Finanze whether they had picked up and they all replied "no".

I had no hand in the shooting of the Tenente of the Guardie di Finanze, neither did I, at any time, urge Rosario to fire at him. I was more or less an innocent bystander. I had never seen the dead man or the other civilian before in my life. I do not know even now the identity of the civilian.

This statement has been read to me in Italian by Gabriella Barbati and it is the truth.

Carla CAPPONI

T.W.M. Greenhill, Capt.

25.6.44.

Exhibit 3
H. L. Leitner
Colonel

DECLASSIFIED
NND 785024
By NARA, Date

Judgment.

The Court desires to say at the outset that in arriving at its decision in this case it has not been affected one way or the other by any political considerations. It makes no difference in the mind of the Court that the accused happened to be a member of any political party or that the parties, the tearing down of whose was the original cause of the unhappy events which followed, were those of any particular political party or organ. The deceased man was a human being & the accused is to be judged by this Court as a human being.

It has already been stated in this Court that unless the Court is satisfied beyond reasonable doubt that the accused is guilty he must be acquitted. In the present case there is no doubt that the accused killed the deceased: he himself has admitted it. The only question which remains, therefore, is whether in the particular circumstances the killing of the deceased was a lawful or an unlawful act. The accused claims that it was a lawful act on the ground that he was acting in his own defence & he invokes Art 52 of the Italian P.C.

In assessing the validity of this claim by the accused, the Court must be guided solely by the evidence given during this trial. This evidence has been extremely lengthy & voluminous & the Court has attended very carefully to the whole of it. As has already been pointed out, there has been considerable conflict of testimony between the various witnesses with regard to many details of greater or lesser importance. The Court does not propose to set out here in detail its judgment on the accuracy or otherwise of each witness. Having heard all and weighed

DECLASSIFIED
NND 785074
By NARA, Date

the evidence, it has been possible to form a fairly clear view of the main incidents of what happened. The Court is satisfied that the accused, seeing the deceased leaving down the porters, addressed him in an arrogant & hostile manner: that the deceased replied in an equally hostile manner; pulled out his pistol & pointed it at the accused: that accused thereupon, without waiting, pulled out his own pistol in turn & shot the deceased. In the view of the Court, this is a case in which two excitable & impulsive young men lost their tempers & resorted precipitately & unnecessarily to ~~extreme~~ the use of firearms.

It remains, therefore, to consider the legal consequences of these events: and action taken by two parties. In doing this we do not forget that the events took place on the 5th June – a day, doubtless, when the atmosphere was fraught with electricity & feelings ran high.

Allowing for this, the Court is satisfied that the action of the deceased in drawing his pistol was ~~quite~~ unwarranted & amounted to an ~~unjust~~ a "falso ingiusto" within ~~the~~ ~~52 (2)~~ & to an "offesa ingiusta" within art. 52 of the P.C. Having said this, however, the Court is equally satisfied that the re-action of the accused was also unwarranted and ~~to~~ exceeded the bounds of defence proportionate to the "offesa". As was said by the Prosecuting Officer, when confronted by the pistol of the deceased, the accused had other means of dealing with the situation without shooting to kill straight away. It does not ~~a~~ in the least follow that, because the deceased drew his pistol, he had any intention of shooting. There is no evidence to show that he had any such intention & ~~the~~

DECLASSIFIED NND 785024 By NARA, Date

and no witness has suggested that any words were spoken to show that the deceased had any such intention. In any case, it is clear that a number of other courses were open to the accused beside the extreme course which he took.

In these circumstances, the Court rules ~~Consider~~ (i) that the defence put forward under Art 52 of the P.C. has not been fully made out: (ii) that ~~in the view of the Co~~ the accused ~~that~~ did not ~~comm~~ act under any such error as is envisaged in the last paragraph of Art 59.

Therefore, the case falls to be dealt with under Art 55 and as such is punishable under Art 589.

At the conclusion of the ~~argument~~ evidence, it was admitted by the prosecution that there was no evidence of aggravating circumstances as alleged in the charge sheet. The Court has, therefore, to consider only whether there are any extenuating circumstances under Art 62 of the Italian Penal Code. On all the evidence, the Court rules that the accused is entitled to the benefit of the extenuating circumstances specified in Art 62 (2). ~~the Co.~~ In relation to this point, it has been pointed out to the Court that conflicting opinions have been expressed by high judicial authority in Italy as to whether an accused who is found guilty under Art 55 can properly claim the benefit of Art 62 (2): but the Court decides that in view of this conflict of opinions any doubt must, in this case, be resolved in favour of the accused.

For the above reasons, the Court finds the accused guilty not of the offence charged

DECLASSIFIED
NND 785074
By NARA, Date

in the charge sheet (namely arts 575 & 61 (1c) of the P.C.) but of the lesser offence contemplated by art 55 punishable in accordance with art. 589 with the benefit of art 62 (2).

If the Defence desires that, before imposing sentence, the Court should take into consideration other extenuating circumstances or wishes to make any observations on the ~~proper~~ sentence to be imposed on the basis of the above rulings, the Court will be pleased to hear their submissions. But, before hearing any such submissions by the defence, ~~the Court must~~ the Prosecutor if he has any evidence of previous convictions to adduce.

DECLASSIFIED
NND 785021
By NARA, Date

94

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Retrieval Log
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CASE

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[6-8/1944?];
[Folder, Date, No, p 9 Dates];

187 [1943-1947], [(8s/#8)]

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151

DECLASSIFIED
NND 785024
By NARA, Date

95

DEPARTMENT OF THE ARMY
THE ADJUTANT GENERAL CENTER
WASHINGTON, D.C. 20314

21 MAY 1973

DAAG-ASR-S (73031)

Mr. Daniel T. Goggin
Director, General Archives Division
Washington National Records Center, GSA
Washington, D. C. 20409

Dear Mr. Goggin:

I am returning the Allied Military Government court case involving Rosario Bentivegna, which you forwarded for review on 12 April 1973, on behalf of representatives of the Italian newspaper Il Messaggero in New York.

It has been determined that this document was properly declassified by OSD under the 2 May 1972 guidelines.

Also, there is no basis to withhold this document from release to the public under the provisions of the Freedom of Information Act.

Sincerely,

Cyrus H. Froker

for S. J. POMRENZE
Chief, Office Management Division
TAGO

Inclosure
RG 331, Allied Commission
Allied Military Government,
Region IV, Legal Section,
Legal Case, 1944, #7762

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Authority NND 785024
By NARA, Date

96

Legal file

[illegible] DIVISION

L/C/[illegible]

30 August 1944

SUBJECT : Rosario BENTIVEGNA case.

TO : Major T. W. Battersby
Deputy Chief Public Safety Officer.

1. This is to assure you of immediate compliance with your request of 27 August 1944, in respect to the above.

2. I am grateful for the opportunity to be of rendering myself on this matter.

Robert C. Hendrickson,
Major, A.U.S.
Regional Legal Officer.

RCH/[illegible]

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Authority JCS ltr 1/4/74
By Lewis NARS, Date 5/28/74

~~CONFIDENTIAL~~

~~SECRET~~

Classification changed to Declassified by Authority of [illegible]

186

153

DECLASSIFIED
NND 785074
By NARA, Date

Rec'd Aug 1, 44

97

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

Provincia di Roma - Corte Generale Alleata

Nome dell'accusato: Rosario Bentivegna
Indirizzo dell'accusato: Via Torino 128, Roma
Data di arresto: 23 giugno 1944
Imputazione: omicidio
Data del dibattimento: 14 luglio 1944 e seguenti.
Data della sentenza: 22 luglio 1944
Condanna: 18 mesi di reclusione per il reato previsto dagli artt. 55- 589 - 62 n.2 cod.pen. italiano.

MOTIVI PER LA ISTANZA

1) doveva essere applicato l'art.52 del codice penale italiano. In base a tale articolo, il Bentivegna doveva essere assoluto.

La Corte Generale, con il suo verdetto, ha dichiarato che il Bentivegna, vedendo il Barbarisi strappare i manifesti, gli si rivolse in maniera "arrogante" ed "ostile"; che il Barbarisi rispose in maniera ugualmente ostile ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accadde il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur considerando questo, la Corte è convinta che l'atto del decaduto di estrarre la pistola, non era giustificato e costituiva una offesa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere l'esattezza dell'argomentazione della Corte, salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giubba su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di uffi=

REGION IV CASE N° 776285

DECLASSIFIED NND 785014 NARA, Date

98

ciale di Polizia;

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito Comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione Nazionale;

c) il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua arbitraria azione, spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto del Barbarisi, che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna doveva necessariamente ritenere di essere in presenza di un elemento ostile della quinta colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici e di un partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 giugno era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Na=

REGION IV CASE N° 787/62

155

DECLASSIFIED
NND 785024
By NARA, Date

zionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata, eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato, quando si trovò dinanzi alla pistola del Barbarisi, poteva fronteggiare con altri mezzi la situazione, Secondo la Corte il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è, a nostro avviso, contraddetto dalle circostanze di causa e dallo spirito della legge italiana. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi - e aveva perciò diritto di difendersi -, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell' avversario, se non quella di reagire rapidamente con violenza.

Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il Bentivegna riuscì a prevenirlo facendo fuoco prima di lui. Del resto, questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla.

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto del Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi, invece, non si limitò all'estrazione dell'arma, ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei seguenti termini:

REGION IV CASE N° 7762

DECLASSIFIED
NARA, Date

100

" La Corte è convinta che (il Barbarisi) tirò fuori la pistola e "la puntò contro l'imputato". Un simile contegno non può essere spiegato che con l'intenzione di usare effettivamente l'arma contro il Bentivegna, il quale, se avesse atteso un attimo, avrebbe potuto cadere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco; e ciò è tanto vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo imminente e mortale. Nè la legge positiva italiana, nè il nostro costume morale impongono la fuga di fronte al pericolo; ma, a prescindere da tale osservazione, si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di uccidere da parte del Bentivegna, il quale ebbe una sola intenzione: quella generica di rispondere con adeguatezza di mezzi ad una minaccia, che si palesava estremamente grave ed immediata.

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragionevolmente nelle condizioni previste dall'art.52 del Codice penale.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovrebbe sempre riconoscere che il Bentivegna doveva ritenersi minacciato nella propria integrità fisica e costretto a reagire senza perdere tempo per non soccombere di fronte all'avversario. 182

La nostra legge riconosce lo stato soggettivo di legittima difesa altrimenti detto legittima difesa putativa, ponendo solo la condizione che la convinzione soggettiva sia basata su condizioni

REGION IV CASE N° 7762

DECLASSIFIED NND 785074

di fatto, che l'uomo normale apprezzerebbe in tal senso.-

Ora, chiunque si fosse trovato il 5 giugno, nelle condizioni in cui si trovò il Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale pericolo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso.-

Per queste considerazioni, riteniamo che il verdetto della Corte Generale debba ritenersi viziato da una intima contraddizione logica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.-

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze, applicando l'art.52 ed assolvendo il Bentivegna.-

2) La Corte Generale con il suo verdetto ha dichiarato che il Bentivegna ha agito in istato di legittima difesa, valutando però in modo inesatto, e perciò colposamente, la proporzione fra la reazione e l'offesa ed ha aggiunto doversi riconoscere che vi fu azione provocatoria da parte del Barbarisi.-

In conformità della legge italiana ha perciò ritenuto responsabile il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli artt. 589 e 62 n.2 del cod.pen. italiano.-

La Corte ha anche dichiarato nel suo verdetto di voler fare astrazione completa da considerazioni politiche e di volere giudicare l'imputato come un essere umano e considerare il deceduto come un essere umano.-

Con la sentenza, però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appare del tutto sproporzionata alla natura dell'episodio.-

181

Nel determinare la pena e nel rispondere all'istanza di sospensione della sua esecuzione ai sensi dell'art.163 del codice penale italiano, la Corte doveva attenersi ai criteri fissati nell'art.133 dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato, ma ha acceduto alle richieste del P.M. proprio per quei motivi politici che aveva dichiarato di voler trascurare nella prima frase della motivazione della sua decisione.-

REGION IV CASE N° 7762

DECLASSIFIED
NND 785024
By NARA, Date

102

Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il benefi - cio della provocazione; ciò che fa notevolmenre ridutte la gravità del reato stesso e la misura della colpa, essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò, fino quasi all'annullamento, la sua entità.-

Detto ciò, si riconosce implicitamente la nessuna pericolosità dell'imputato, il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto l'azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.-

Non sembra perciò giusto attribuire, come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.-

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte.

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della pro - vocazione, è chiaro che il delitto colposo attribuito al Bentivegna non solo non può apparire tanto grave in sè da richiedere esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.-

180

DECLASSIFIED NND 785024 By NARA, Date

Il criterio dell'esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa della decisione della Corte, premessa nella quale si afferma di voler giudicare umanamente un essere umano.-

Ma, anche accettando il criterio dell'esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica, ecc.-

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati devono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante è stato compiuto.-

Ma noi vogliamo aggiungere un'ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena, attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.-

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.-

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire.-

Rosario Bentivegna è un incensurato; appartiene ad un'~~esta~~ onesta e patriottica famiglia. E' un giovane studioso del quale il Prof. Caronia, Pro-Rettore dell'Università di Roma, ha tessuto il più invidiabile elogio, sia dal punto di vista intellettuale ~~dhel~~ che dal punto di vista morale.- 173

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche che non dovevano essere trascurate perchè nei nove mesi che precedettero l'arrivo degli Alleati, egli fu uno di quei valorosi partigiani, ai quali ogni giorno si rivolge il Comando Supremo delle

DECLASSIFIED
NND 785024
By ... NARA, Date ...

Forze Alleate per suscitarne la combattività ed elogiarne il contributo di azione.-

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericoloso per l'ordine sociale e politico del suo Paese.-

Vogliamo perciò sperare che la sentenza della Corte Generale, che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del cod.penale (condanna condizionale), che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.-

Roma, 1° agosto 1944 -

DECLASSIFIED
NND 785074
By NARA, Date

105

REMARKS BY THE COUR

Having read carefully through the attached Petition we see no reason to alter our view that the Accused was rightly convicted and that the sentence was certainly not excessive.

With regard to the conviction, we are of opinion that the question whether or not the Accused exceeded the bounds of legitimate self-defence was a question of fact, as to which the Court (which heard the evidence and saw the witnesses) was the best judge. We are satisfied on the evidence, to which we listened with great attention, that the Accused did exceed the bounds of legitimate self-defence, in the sense that the action which he took was unnecessarily violent, i.e. was out of proportion to the degree of offence offered. We adhere to the view expressed in our judgment that the mere fact that the deceased drew his pistol and pointed it at the Accused did not of itself indicate any immediate intention to fire, still less to kill. The evidence in fact points to the contrary conclusion, since the deceased did not in fact fire, although he clearly had the opportunity to do so, if his pistol was loaded (as to which there was no evidence), while it was pointed at the Accused. It is idle to assert that the Accused could not have reacted in any other way. For one thing, he could have spoken, and explained who he was and the reason for his interference. If shooting was necessary (which we, having heard the evidence, do not believe), he could have shot to wound and not to kill. For the above reasons we are of opinion that the Petition discloses no grounds for setting aside the conviction.

As to the sentence, the factors referred to in the Petition were all carefully considered and given their full weight. But for the mitigating circumstances, the good character of the Accused, and the part that he had played as an active partisan, we should have thought it right to impose a much heavier sentence. The Petition discloses no point of law which has not already been fully considered, and consequently we are of opinion that there is no legal ground for interfering with the sentence. We are not blind to the fact that there may be political reasons, of which we are not the appropriate judges, which might render a reduction of sentence desirable. As to this, it is suggested that before modifying the sentence on political grounds it would be wise to seek the views of the Regional Commissioner, who is responsible for the future maintenance of law and order in Rome, and who is in the best position to judge the probable political repercussions of any such action.

H. C. [illegible] Colonel — President.

177

[illegible] Major } Members.

Note by Lt.Col. I.G.H. CAMPBELL, Member of the Court

I concur with all the above remarks except the two concluding sentences, which I consider out of place in "Remarks by the Court". As they

(over)

162

DECLASSIFIED
NND 785024
By NARA Date

have been inserted I wish to make the following comments thereon :-

a) These sentences may create the impression that the sentence of the Court was imposed with an idea, or hope, in the mind of the Court that it would be reduced on political grounds. Such an impression would be false- at least, so far as I am concerned.

b) If the reviewing authority is considering reduction on political grounds, I do not think it would be wise to seek the view of the Regional Commissioner responsible for the future maintainance of law and order in ROME. This case has had widespread publicity : presumably any reduction would receive equal publicity. It is necessary, therefore, to judge "the probable political repercussions" not merely in ROME but throughout Italy now liberated and yet to be liberated.

I. Campbell Lt Col

I. G. H. CAMPBELL,
Lt. Colonel,
Member.

Supplemental Remarks of Major ROBERT C. HENDRICKSON.
Member of the Court.

Since it is quite clear from the Note appended to the remarks of the Court, by Lt. Col. CAMPBELL, that the two concluding sentences to which I subscribed as a member of the Court, are subject to conflicting interpretation, I feel constrained to add that , in my considered opinion, there is no factor involved in this issue which would justify a modification or reduction of the sentence; in fact, I hold strongly to the view that the sentence imposed was exceedingly, if not excessively mild.

R. C. Hendrickson

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
Member.

DECLASSIFIED
NND 785084
By NARA, Date

107

Rec'd July Aug 1, 44

FORM. N. 1

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

(In uso per la revisione delle cause giudicate davanti i Tribunali Militari o Corti Italiane)

NOTA: Questo stampato deve essere presentato nel termine di 30 giorni dalla sentenza.

PROVINCIA DI Roma

~~Tribunale~~ Corte Generale Alleata

Nome dell'accusato Rosario Bentivegna

Indirizzo dell'accusato Via Torino 128, Roma

Data di arresto 23 giugno 1944

Imputazione omicidio

Data del dibattimento 14 luglio 1944 e seguenti Data della sentenza 22 luglio 1944

Condanna per il reato previsto dagli art.5, 58 n.2 cod.pen.it. a 18 mesi di reclusione

Nome del Giudice del Tribunale

Motivi per la istanza 1) doveva essere applicato l'art.52 del cod.pen. In base a tale articolo, il Bentivegna doveva essere assoluto. - _____

La Corte Generale, con il suo verdetto, ha dichiarato che il Bentivegna vedendo il Barbarisi strappare i manifesti, gli si rivolse in maniera "arrogante" ed "ostile"; che il Barbarisi rispose in maniera ugualmente ostile

(vedere fogli allegati)

Data I agosto 1944

(firma dell'accusato o di chi ne fa le veci)

OSSERVAZIONI DEL GIUDICE CHE HA PRESIEDUTO AL PROCESSO, O DELL'UFFICIALE SUPERIORE ADDETTO ALLA GIUSTIZIA DELLA PROVINCIA, OPPURE DEL PROCURATORE, SE NECESSARIO

See Remarks of the Court on separate sheet.

R. G. Lillner
Colonel
President.

Data 4 August 1944

(firma e qualifica)

DECISIONE DELL'UFFICIALE CAPO DEGLI AFFARI CIVILI

176

Data

NOTA: Questo stampato dovrà essere sottoposto all'approvazione dell'Ufficiale Superiore addetto alla Giustizia della Provincia.

REGION IV CASE N° 7762

166

DECLASSIFIED
NND 785084
NARA, Date

ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accadde il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur "considerando questo, la Corte è convinta che l'atto del deceduto "di estrarre la pistola, non era giustificato e costituiva una offe= "sa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere la esattezza della argomentazione della Corte salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giacca su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di ufficiale di Polizia.

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione nazionale.

c) Il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua azione arbitraria spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto

DECLASSIFIED NND 785074 By NARA Date

del Barbarisi, che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna Rosario doveva necessariamente ritenere di essere in presenza di un elemento ostile della V colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici e di un Partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Nazionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato quando si trovò dinanzi alla pistola del Barbarisi poteva fronteggiare con altri mezzi la situazione senza far fuoco uccidendo senz'altro l'avversario. Secondo la Corte il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è a nostro avviso contraddetto dalle circostanze di causa e dallo spirito della legge italiana applicata nel caso Bentivegna. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi e aveva perciò diritto di difendersi, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell'avversario, se non quella di reagire rapidamente con violenza.

Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il

DECLASSIFIED
NND 785014
By NARA, Date

Bentivegna Rosario riuscì a prevenirlo facendo fuoco prima di lui. Del resto questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla.

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto di Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi non si limitò alla estrazione dell'arma, ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei termini seguenti: "La Corte è convinta che (Barbarisi) tirò fuori la pistola e la "puntò contro l'imputato." Un simile contegno non può essere spiegato che con la intenzione di usare effettivamente l'arma contro il Bentivegna il quale, se avesse atteso un attimo, avrebbe potuto cadere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco ; tanto è vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo imminente e mortale. Nè la legge positiva italiana, nè il nostro costume morale impongono la fuga di fronte al pericolo; ma a prescindere da tale osservazione si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di uccidere da parte del Bentivegna il quale ebbe una sola intenzione: quella generica di rispondere con adeguatezza di mezzi ad una minaccia che si palesava estremamente grave ed immediata. 173

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragionevolmente nelle condizioni previste dall'art.52 del cod.pen.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovrebbe sempre riconoscere che il Bentivegna doveva ritenersi minaccia-

DECLASSIFIED NND 785024 By NARA, Date

to nella propria integrità fisica e costretto a reagire senza perdere tempo per non soccombere di fronte all'avversario.

La nostra legge riconosce lo stato soggettivo di legittima difesa altrimenti detto legittima difesa putativa; ponendo solo la condizione che la convinzione soggettiva sia basata su condizioni di fatto che l'uomo normale apprezzerebbe in tal senso.

Ora, chiunque si fosse trovato il 5 giugno, nelle condizioni in cui si trovò Rosario Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale pericolo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso

Per queste considerazioni riteniamo che il verdetto della Corte Generale debba ritenersi viziato da una intima contraddizione logica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze applicando l'art.52 ed assolvendo il Bentivegna.

2) La Corte Generale con il suo verdetto ha dichiarato che il Bentivegna ha agito in istato di legittima difesa valutando però in modo inesatto e perciò colposamente, la proporzione fra la reazione e l'offesa ed ha aggiunto doversi riconoscere che vi fu azione provocatoria da parte del Barbarisi.

In conformità della legge italiana ha perciò ritenuto responsabile il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli art.589 e 62 n.2 del cod.pen.italiano.

La Corte ha anche dichiarato nel suo verdetto di volere fare astrazione completa da considerazioni politiche e di volere giudicare l'imputato come un essere umano e considerare il deceduto come un essere umano.

172

Con la sentenza però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appare del tutto sproporzionata alla natura dell'episodio.

Nel determinare la pena e nel rispondere alla istanza di sospensione della sua esecuzione a termini dell'art.163 del codice penale italiano; la Corte doveva attenersi ai criteri fissati nell'art.133

DECLASSIFIED
NND 785024
By NARA, Date

dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato ma ha acceduto alla richiesta del P.M. proprio per quei motivi politici che aveva dichiarato di volere trascurare nella prima frase della motivazione del suo verdetto.

Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il beneficio della provocazione; ciò che fa notevolmente ridurre la gravità del reato stesso e la misura della colpa essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò fino quasi all'annullamento, la sua entità.

Detto ciò, si riconosce implicitamente la nessuna pericolosità dell'imputato il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto la azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.

Non sembra perciò giusto attribuire come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte.

171

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della provocazione, è chiaro che il delitto colposo attribuito al Bentivegna

DECLASSIFIED NND 785024 By NARA, Date

non solo non può apparire tanto grave in sè da richiedere esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.

Il criterio della esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa del verdetto della Corte, premessa nella quale si afferma di volere giudicare umanamente un essere umano. Ma anche accettando il criterio della esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica ecc.

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati debbono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante è stato compiuto.

Ma noi vogliamo aggiungere una ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena; attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire. 171

Rosario Bentivegna è un incensurato; appartiene ad una onesta e patriottica famiglia. E' un giovane studioso del quale il Prof. Caronia Pro Rettore della Università di Roma ha tessuto il più invidiabile elogio sia dal punto di vista intellettuale che dal punto di vista morale.

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche

DECLASSIFIED
NND 785024
By NARA, Date

che non dovevano essere trascurate perchè nei nove mesi che precedettero l'arrivo degli Alleati egli fu uno di quei valorosi partigiani ai quali ogni giorno si rivolge il Comando Supremo delle Forze Alleate per suscitarne la combattività ed elogiarne il contributo di azione.

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericolo per l'ordine sociale e politico del suo paese.

Vogliamo perciò sperare che la sentenza della Corte Generale che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del codice penale (condanna condizionale) che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.

Roma,I agosto 1944

Pertini
Saragat
Sol Orlando

DECLASSIFIED
NND 785024
By NARA, Date

115

FORM No. 11

ALLIED MILITARY GOVERNMENT

APPLICATION FOR REVIEW OF SENTENCE

(To be used for Review of Cases tried in either Allied Military or Italian Courts)

NOTE: This form must be filed within 30 days of Sentence.

PROVINCE OF .....

..... COURT OF .....

Name of Accused .....

Address of Accused .....

Date of Arrest .....

Charge .....

.....

Date of Trial ..... Date of Sentence .....

Sentence .....

Name of Judge and Court .....

.....

Reasons for Application .....

.....

.....

.....

.....

Date ..... 194....

.....
(Signature of Accused or of his Attorney)

REMARKS BY TRIAL JUDGE, PROVINCIAL SENIOR LEGAL OFFICER, OR PROCURATORE, IF APPLICABLE.

.....

.....

.....

Date ..... 194....

.....
(Signature and Description

168

DECISION OF CHIEF CIVIL AFFAIRS OFFICER

.....

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.....

Date ..... 194....

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NOTE: This form will be submitted to the Senior Legal Officer of the Province.

1943 — Napoli, R. Tip. Giannini

172

DECLASSIFIED
Authority NND 785074
By NARA, Date

116

(File)

al
Ministero Grazia e Giustizia
Roma.

Il sottoscritto, Rosario BENTIVEGNA, fu Vincenzo, ~~[illegible]~~ a di de Somma Valentina, nato a Roma il 22-6-1922, domiciliato a Roma ~~[illegible]~~ in Piazza Foro Traiano, 1 a chiede copia della sentenza emanata nel l'agosto del 1944 dall'Alta Corte Militare Alleata, ed in cui, in seguito a revisione del processo, veniva assolto dall'imputazione di omicidio preterintenzionale nella persona del ten. Giorgio Barbarini, con la formula piena della legittima difesa. 165
Si richiede per uso di concorso.
Con osservanza.
Roma, 10 settembre 1947.

Rosario Bentivegna

CASE RECORD

Si trasmette l'unita richiesta con preghiera di volere inviare urgentemente detta copia di sentenza.

10-9-47

L'ufficiale di collegamento
Thomas

ACC 10400/142/197 [1 of 2] Legal Cases, 7762
[June - Aug. 1944?];
[Folder, Dated, No Dates]; [1943 - 1947]

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93

14

ACC

10400/142/197 [1 of 2]

Legal Cases, 7762
[June - Aug. 1944?];
[Folder, Dated, No Dates]; [1943 - 1947]

93

175

ACC 10400/142/197 [2 of 2] Legal Cases 7762
[June - Aug. 1944?];
[Folder, Data, No Dates]; [1943 - 1947]

NMPBOX

1

146

DECLASSIFIED
NND 785024
By NARA, Date

PROMEMORIA per

ROSARIO BENTIVEGNA

INCIDENTE DEL 5 GIUGNO 1944.

Il giorno 5 giugno 1944, verso le ore 15, Rosario Bentivegna accompagnato dalla studentessa Carla Capponi, mentre prestava servizio di vigilanza nei pressi del giornale "L'Unità", a Via 4 Novembre, e recava sul braccio la fascia tricolore del Comitato di Liberazione Nazionale, incontrava presso l'imboccatura della Via Tre Cannelle un militare, senza berretto e che portava la giacca sul braccio, che andava strappando con impeto alcuni manifesti del giornale "L'Unità", nonchè altri manifesti inneggianti alla liberazione di Roma e all'Italia libera.

Il Bentivegna intimò l'alt al militare, il quale, con aria sprezzante lo investì domandandogli con quale diritto egli intervenisse. Allora il Bentivegna mostrò il bracciale tricolore del Comitato di Liberazione Nazionale e si qualificò per "volontario della libertà", di guardia al giornale, ed invitò il militare a seguirlo alla sede del giornale.

Ma il militare, anzichè ottemperare all'invito, estraeva la rivoltella, metteva un colpo in canna e la puntava al petto del Bentivegna.

In quella, un uomo in abito civile, che era accanto al militare nel momento in cui questi fu fermato dal Bentivegna, e che era alquanto distante da lui, mentre il militare faceva il gesto di puntare la rivoltella contro il Bentivegna, sparò alcuni colpi in direzione del gruppo. Nello stesso

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REGION IV CASE No 7762

DECLASSIFIED
NND 780014
By ... NARA, Date ...

istante il Bentivegna, sentendosi minacciato così gravemente dal militare, fece un passo indietro, e, estratta la propria pistola tirò fulmineamente tre colpi contro il militare, il quale cadde immediatamente a terra, e decedette poco dopo.

Qualche minuto dopo accorse un agente di polizia in borghese, al quale il Bentivegna, immediatamente, riferì le circostanze dell'accaduto, e dette le proprie esatte generalità, nonostante che in quel momento egli fosse sprovvisto di documenti di identità, possedendone alcuni falsi che gli erano serviti per sottrarsi alle ricerche della polizia nazi-fascista durante i nove mesi dell'occupazione tedesca di Roma. E' da notare che le autorità nazi fasciste avevano posto sul capo del Bentivegna una taglia di un milione e mezzo.

Si è saputo poi che l'ucciso era un tenente della Guardia di Finanza, Barbarisi, che il Bentivegna non aveva mai veduto prima di quell'occasione.

Per dichiarazioni fatte da alcuni compagni che spontaneamente si presentarono all'"L'Unità", si credette in un primo momento che il Barbarisi fosse una nota spia fascista, che aveva preso parte a vari plotoni di esecuzione contro patrioti italiani, ma successivamente si è chiarito che questa identificazione del Barbarisi era erronea, e pare che l'equivoco sia stato ingenerato da una comunicazione della radio alleata di anzio che aveva indicato, prima della liberazione di Roma, un individuo dal nome simile a Barbarisi, come nota e pericolosa spia.

87

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DECLASSIFIED
NND 785024
By NARA, Date

Che l'incidente si sia svolto nel modo sopra descritto è comprovato:

1°) dalle dichiarazioni di Bentivegna Rosario, che per le sue qualità di carattere, di educazione, è assolutamente credibile. E' comprovato altresì dal comportamento stesso del Bentivegna, il quale, anzichè sottrarsi alle indagini dell'autorità si mise a disposizione di questa, dando in un primo momento le sue vere generalità, che avrebbe invece potuto facilmente occultare, e in un secondo momento presentandosi spontaneamente all'autorità di polizia alleata per fornire tutti i chiarimenti opportuni.

2°) Dalle dichiarazioni fatte dalla teste, signorina Carla Capponi, la quale accompagnava il Bentivegna, e che fu presente allo svolgimento del fatto. La Capponi è teste assolutamente insospettabile, per le sue altre qualità morali.

3°) Dalla dichiarazione scritta, allegata al processo inviata dalla N.D. Isabella Galletti, la quale mentre si trovava nella sua casa, intenta a leggere un libro udì voci di un alterco che si svolgeva nella sottostante Piazzetta delle Tre Cannelle; avvicinatasi alla finestra essa vide due uomini, di cui uno vestito da militare, e l'altro con il bracciale dei patrioti, che si scambiavano parole violente, e vide poi che il militare aveva puntato la rivoltella sul petto dell'altro: udì poi delle esplosioni, ma si ritirò impaurita dalla finestra, e quando si riaffacciò vide che il militare era stramazzato a terra.

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DECLASSIFIED
NND 785024
By NARA, Date

La signora Galletti afferma egualmente che ha notato che i manifesti del giornale "L'Unità" erano stati strappati, e che il militare non portava nè il berretto nè la giacca, che teneva sul braccio.

4°) Altri testi che possono chiarire in pieno le circostanze del fatto, e la cui audizione venne chiesta verbalmente, dall'difensore del Bentivegna, Avv. Corrado Perris, all'ufficiale della polizia alleata che ha proceduto all'inchiesta e agli interrogatori, sono: 1°) Italo De Tuddo, di Aurelio, di anni 28, residente in Roma Via Flaminia 19, che fu presente al fatto, sino al momento ~~in cui~~ il Barbarisi impugnata la rivoltella fece l'atto di mettere il colpo in canna, dopo di che egli si allontanò in bicicletta temendo di poter essere colpito da qualche colpo andato a vuoto; 2°) signor Musu Domenico, e miglie, ~~xxxxxxxxxxx~~ Via Orazio 31, Roma: i coniugi Musu ~~xxxxxxxxxx~~ passando per le scale di Via delle Cordonate videro il militare, accompagnato da un borghese, che strappava i manifesti; subito dopo videro sopraggiungere un giovane, che rimproverò il Barbarisi; videro poi il Barbarisi trarre dalla fondina la rivoltella, e con questa minacciare il giovane che gli veniva incontro.

La difesa del Musu potrebbe indicare altri testi sulle circostanze del fatto, ma si riserva di addurli in caso di necessità.

85

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DECLASSIFIED
Authority NND 785024
By NARA, Date

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Così ricostruiti i fatti, non vi è dubbio che nella specie non sussista alcuna responsabilità ~~xxx~~ da Bentivegna, il quale ha agito ~~xxxxxxx~~ per legittima difesa. Si tratta, invero, di un caso tipico di legittima difesa, in cui chiunque si fosse trovato al posto del Bentivegna, avrebbe agito nello stesso modo.

A ciò si aggiunga che alle ore 3 del 5 giugno il Bentivegna poteva e doveva legittimamente ~~xxx~~ andare armato, in quanto, non solo non era stato emanato ancora il bando che imponeva la consegna delle armi, e che scioglieva le squadre armate dei vari Partiti, ma, i gruppi armati dei singoli partiti erano investiti di funzioni di ordine pubblico.

PERSONALITA' DI BENTIVEGNA ROSARIO

Non esitiamo a definire Bentivegna Rosario un combattente eroico della guerra di liberazione nazionale italiana, perchè il contributo che egli ha dato alla lotta contro i nazi-fascisti, a Roma e nelle vie cinanze di Roma, è veramente cospicuo, anzi eccezionale.

Il Bentivegna, studente in medicina del 5° anno, dopo l'8 settembre ha sentito che il suo dovere del momento attuale, al di sopra di qualsiasi interesse personale, era quello di lottare contro i tedeschi oppressori, e i loro manutengoli fascisti.

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DECLASSIFIED
NND 785024
By NARA, Date

Ha dimostrato sempre nella sua attività di partigiano, di componente dei Gruppi di Azione Patriottica, di volontario della libertà, doti di mente e di cuore assolutamente superiori a qualsiasi elogio.

Ecco, alcune delle più importanti azioni compiute dal Bentivegna:

Nella sua attività di partigiano, egli nel maggio del '44 organizzò a Palestrina bande armate che dirigeva nella lotta contro i tedeschi, distrusse le liste di leva al Municipio di Palestrina, operò più azioni armate contro gruppi di tedeschi, (in complesso sei azioni), in cui oltre ad uccidere vari tedeschi, catturare 28 prigionieri, che riuscirono poi a fuggire nell'imminenza dell'entrata a Roma delle truppe alleate, avendo egli ed alcuni suoi compagni allontanarsi dal luogo dov'erano i detenuti, egli tolse al nemico due radio trasmittenti e riceventi, due motori Diesel, provviste alimentari per 500 persone per la durata di cinque giorni.

Nella sua attività di componente di un gruppo di azione patriottica a Roma, egli, fra l'altro compì le seguenti gesta, che sono veramente eccezionali:

danneggiò un camion tedesco innanzi al Teatro dell'Opera; insieme con il suo gruppo tese un'imboscata e uccise un tedesco in Via XXIII Marzo; eseguì un lancio di bombe a Piazza Barberini; eseguì un attacco alle truppe SS autotrasportate presso le carceri di Regina Coeli; eseguì l'attacco al comando germanico al Corso d'Italia; eseguì un attacco notturno sulla Via Casilina distruggendo un camion tedesco; eseguì un altro attacco notturno a Via Tiburtina distruggendo un altro camion tedesco; eseguì

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83

DECLASSIFIED
NND 785024
By NARA, Date

un altro attacco a un gruppo tedesco, sulla Via Prenestina, danneggiando un camion; distrusse un centralino telefonico tedesco; distrusse un camion tedesco presso il Muro Torto; eseguì un attentato contro il Pizzirani, capo dei fascisti repubblicani di Roma; insieme con il suo gruppo giustiziò tre fascisti (che avevano ucciso una donna, che era andata a protestare per aver avuto razziato un figlio, al Viale Giulio Cesare, presso la caserma dell'ala fanteria; eseguì l'attacco alla colonna fascista che si muoveva per Via Tomacelli; incendiò un camion carico di benzina a Via Claudia (distrusse un altro camion tedesco a Via Cavour); eseguì personalmente l'attacco alla colonna tedesca di SS in Via Rasella, in cui trovarono la morte 32 tedeschi e furono feriti più di una diecina.

Di queste azioni del Bentivegna, la maggior parte delle quali è stata comunicata dai giornali clandestini del Tempo, ed in particolare dall'"Unità", il Bentivegna può assumere la piena responsabilità, ed il Partito Comunista Italiano le approva incondizionatamente come veri e propri atti di guerra compiuti contro i nazi-fascisti. Lo stesso deve dirsi anche dell'attentato a Via Rasella, che il Bentivegna ha compiuto con assoluto disprezzo del pericolo a cui si esponeva, contro una colonna di SS armata in pieno assetto di guerra.

82

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DECLASSIFIED
NND 785024
By NARA, Date

Data la personalità eccezionale del Bentivegna, e le modalità tutte del tragico incidente, in cui doveva trovar la morte il tenente Barbarisi, confidiamo in una sollecita escarcerazione di lui.

Roma, 5 luglio 1944

DECLASSIFIED
NND 785024
By NARA, Date

CASE OF BENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by the article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indicated by the art. 576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indicated by the articles 61 and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art. 61 N°10 : having committed the act against a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administrative or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service.

If the answers are negative, the aggravating circumstance of the

DECLASSIFIED NND 785024 By NARA, Date

art.6I N°IO does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES. The extenuating circumstances which, hypothetically, might be concerned in this case are the following :

A) Art.62 N°1 : having acted for motives which have a special moral or social value.

B) Art.62 N°2 : having reacted when in a state of anger, caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury. It is also required the necessity of the defence, so that the danger or the damage could non be avoided unless with the defence. Besides that, the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the necessity, it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imprisonment not inferior to 2I years (Art.575).

If there is an aggravating circumstance, the punishment which would be imposed for the committed crime is increased as far as a third. In no case, the period of imprisonment can exceed 30 years (Art.64).

If there is an extenuating circumstance the punishment is diminished of a period not exceeding a third (Art.65). Existing more than one extenuating circumstance, the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum-

DECLASSIFIED
NND 785024
By NARA, Date

stances ,the Judges decide if are prevailing the one or the others, and will consider only the prevailing ones.They can also consider them equivalent,so that no augment or diminution will took place. (art. 69)

DECLASSIFIED
NND 785024
By NARA, Date

5°) Che il Tenente Barbarisi, e forse anche un'altra persona non individuata, con lo stracciare i manifesti patriottici che si trovavano nelle edicole infisse all'esterno del fabbricato dove ha sede "L'Unità" ha compiuto un fatto che è apparso obbiettivamente ostile ai patrioti del movimento italiano di liberazione ed agli stessi Alleati;

6°) Che la reazione verbale e l'intervento del Bentivegna erano quindi pienamente giustificati, dal punto di vista oggettivo e soggettivo.-

7°) Che il Barbarisi ha reagito a tale intervento in modo violento, prendendo per primo l'iniziativa di passare alle armi.-

8°) Che il Bentivegna non aveva altra possibilità di scampo al pericolo grave, attuale, immediato che minacciava la sua integrità fisica, che non in una reazione altrettanto rigida ed immediata.-

9°) Stabiliti così i fatti, la difesa intende dimostrare, che anche dal punto di vista psicologico, il doloroso episodio può esser spiegato solo come dovuto ad un gesto di naturale difesa, imposto dall'istinto di conservazione.-

10°) Pertanto la difesa vuol provare che secondo la legge italiana, il fatto non è punibile, perchè la reazione del Bentivegna è stata necessaria e propor-

DECLASSIFIED
Authority NND 785024
By NARA, Date

zionata all'azione offensiva del Barbarisi, e che è applicabile nel caso in esame l'istituto della legittima difesa nei suoi vari aspetti, che esime da qualsiasi responsabilità.-

DECLASSIFIED
NND 785074
By NARA, Date

Udienza 17 luglio

Joan B. Sergakis
A.S.N. 19072607
Tech/Sgt. U.S. Army Air Force

La difesa ritiene che il Pubblico Accusatore non è riuscito a dimostrare l'illegittimità del fatto compiuto da Rosario Bentivegna, e la responsabilità dell'accusato. - Perciò potremmo pregare la Corte di emettere sin d'ora la Sua decisione. Ma noi vogliamo dare la prova completa, inequivoca, positiva dell'innocenza di Bentivegna Rosario.

Ci proponiamo, pertanto, di provare:

1°) che il fatto è avvenuto in un'atmosfera di guerra guerreggiata; che il Bentivegna come tutti i patrioti italiani, secondo gli ordini e le disposizioni impartite dal Comitato di Liberazione Nazionale, attraverso le organizzazioni militari, collegate con il Comando Alleato, doveva essere in istato di allarme e di difesa;

2°) che Rosario Bentivegna, il 5 giugno, alle ore 3 pomeridiane, era un volontario della Libertà in attività di servizio, e che egli era stato incaricato di proteggere la sede del giornale "Unità" e le immediate adiacenze, contro eventuali attacchi ed offese di elementi nazifascisti;

3°) che Rosario Bentivegna era autorizzato a portare le armi;

4°) che i Patrioti erano vincolati agli ordini ricevuti,

DECLASSIFIED
NND 785024
By NARA, Date

MEMORANDUM
for
ROSARIO BENTIVEGNA
INCIDENT OF THE 5th JUNE 1944.

On the 5th June, at about 3 o'clock in the afternoon, Rosario Bentivegna, accompanied by the student Miss Carla Capponi, while on guard outside the building of the newspaper "Unita", in Via Quattro Novembre, and wearing the three-colour arm band of the committee of National Liberation, ~~he~~ met a soldier at the entrance to Via Tre Cannelle, without his military cap and carrying his jacket on his arm, who was impetuously tearing down the advertisements of the newspaper "L'Unita", and also other advertisements relating to the liberation of Rome and free Italy.

Bentivegna told the soldier to halt, but the latter disdainfully turned on him demanding him what right he had to interfere. So Bentivegna showed his three-coloured arm-band of the Committee of National Liberation and he stated himself to be a "volunteer of liberty", on guard for the newspaper, and he invited the soldier to follow him to the newspaper's offices.

But the soldier, instead of accepting the invitation, drew out his revolver, loaded it, and pointed it at Bentivegna.

At that moment, a man in civil clothes, who was beside the soldier in the moment the latter was stopped by Bentivegna, and who was at the same distance from him, on seeing the soldier point his revolver at Bentivegna, shot several times in the direction of the group. In the same instant, Bentivegna, realising that he was seriously threatened by the soldier, stepped back and drawing his own pistol rapidly shot three times at the soldier, who immediately fell to the

DECLASSIFIED NND 785014 By NARA, Date

ground and died ~~immediately~~ shortly after.

Some minutes later a police agent arrived, to whom Bentivegna immediately recounted the facts of the incident, also giving his own exact generalities, despite the fact that at that moment he was without identity documents, only possessing several false ones which he had used in order to hide from the Nazi-Fascist police who had been looking for him during the nine months of German occupation in Rome. It is worth noting that the Nazi-Fascist authorities had placed a reward of one million and a half ~~for~~ on the head of Bentivegna.

Afterwards it was learnt that the dead soldier was a Lieutenant of the "Guardia di Finanza" by the name of Barbarisi, whom Bentivegna had never seen before that occasion.

From statements made by certain companions who spontaneously presented themselves to the "Unità", it was at first believed that Barbarisi was a well-known Fascist spy who had taken part in various ~~execution~~ firing-squads for the execution of Italian patriots, but later it was found out that this identification of Barbarisi was ~~false~~ incorrect, and it appears that the idea had been taken from an Allied Radio communication from Anzio which had given indication, before the liberation of Rome, about a certain individual with a name similar to Barbarisi, a well-known and dangerous spy.

That the incident occurred in the way described above can be proved:—

1) from the statements of Rosario Bentivegna who for his qualities of character and education is absolutely to be relied upon. This is shown also by the attitude of Bentivegna who, instead of trying to avoid to avoid interrogation put himself at the disposal of the

DECLASSIFIED
NND 785024
By NARA, Date

Authorities, giving as soon as possible his real identity, which he would easily ~~be~~ have been able to conceal, and afterwards presenting himself spontaneously to the Allied police authorities to supply all necessary explanations.

2.) From statements made by witnesses:— Miss Carla Capponi, who accompanied Bentivegna and who was present at the development of the episode. Miss Capponi is a completely reliable witness for reason of her high moral qualities.

3.) From a written statement, adjoined to the deed here forwarded, made by N.D. Isabella Galletti, who, while in her own home reading a book, heard some voices quarelling down below in Piazzetta delle Tre Cannelle; going to the window she saw two men, one dressed as a soldier and the other wearing the patriotic arm-band, who were having a heated argument, and then she saw that the soldier had pointed his revolver at the other's chest: then she heard some explosions, but being frightened she left the window, and when she looked out again she saw that the soldier was lying on the ground.

Mrs. Galletti also states that she noticed the advertisements of the newspaper "L'Unità" had been torn down and that the soldier was not wearing either his military cap or jacket which he was carrying on his arm.

4.) Other witnesses who can fully explain the circumstances of the fact and whose audition was verbally asked for by Bentivegna's defender, Avv. Corrado Perris, to the officer of Allied police who proceeded to the ~~eng~~ carrying out of enquiries and interrogations, are: 1) Italo De Tuddo, son of Amelio, aged 28, resident in Via Flaminia 19, Rome, who

DECLASSIFIED
NND 785074
By NARA, Date

was present at the incident until the moment that Barbarisi had drawn his revolver and loaded it, after which he went away on his bicycle being frightened of being hit by a badly-aimed shot;
2) Mr. Domenico Musu and his wife, Via Orazio 31, Rome: the Musu couple, going up the steps of Via delle Cordonate, saw the soldier accompanied by a civilian, tearing down the advertisements; immediately afterwards they saw a young man arrive, who reproached Barbarisi; they then saw Barbarisi draw his revolver from its case and with this, threaten the young man who was coming towards him.

The defending party could indicate other witnesses able to describe the circumstances of the fact, but he reserves these in case of necessity.

Having learnt the facts of the case it is obvious that no responsibility exists against Bentivegna, who acted for legitimate defence. In fact, one is dealing with a typical case of legitimate defence, in which anybody who might have been in Bentivegna's place would have acted in the same way.

Added to this Bentivegna, on the 5th June at 3. o'clock p.m. could be and had to be legitimately armed as, not only had the proclamation imposing consignment of arms and dissolution of armed squadrons of the various parties not yet been issued, but armed groups of single parties had been charged with duties of public order.

93

DECLASSIFIED
NND 785024
By NARA, Date

ROSARIO BENTIVEGNA'S PERSONALITY.

We will not hesitate to define Rosario Bentivegna as a heroic fighter in the war of Italian-national liberation, because his contribution to the struggle against the Nazi-Fascists, in Rome and its vicinity, is really conspicuous – even exceptional.

Bentivegna, medical student of the 5th year, after the 8th September 1943, felt that above every other personal interest was his only duty of the moment to fight against the German oppressors and their Fascist accomplices.

He always showed in his activity of partisan, as a member of the Groups of Patriotic Action, of volunteer for liberty, mental and spiritual gifts completely above praise.

Here are some of Bentivegna's most important actions:-

In his activity of partisan, in May 1944, he organised at Palestrina armed groups to leave in the fight against the Germans, he destroyed the enrollment lists at the Municipio of Palestrina, organised several armed actions against groups of Germans (in all six actions), in which besides killing various Germans and capturing 28 prisoners, who succeeded later in escaping owing to the imminence of the entry of allied troops in Rome, he and several other companions having left the place where the prisoners were, took away from the enemy two Radio transmitting and receiving sets, two Diesel motors, food supplies for 500 persons to last for five days.

In his activity as a member of a group of patriotic action in Rome, amongst other things he carried out the following truly exceptional deeds:-

He damaged a German lorry in front of the Royal Opera House;

DECLASSIFIED
NND 785074
By NARA, Date

together with his group he organised an ambush and killed a German in Via XXIII Marzo; he carried out a bomb dropping in Piazza Barberini; ~~and~~ an attack against S.S. troops outside Regina Coeli prison; an attack against the German Command in Corso d'Italia; a night attack on Via Casilina destroying a German lorry, another night attack on Via Tiburtina destroying another German lorry, another attack against a group of Germans on Via Prenestina damaging a lorry; he destroyed a German telephone switchboard; he destroyed a German lorry at Muro Torto; he made an attempt on the life of Pizzirani, head of the repubblican fascists in Rome; together with his group he killed three fascists (~~they had~~ these fascists had killed a woman, who had gone to the Caserma of the 81st Infantry in Viale Giulio Cesare, to protest that her son had been taken away); he carried out the attack against the fascist column that was going up Via Tomacelli; he set fire to a lorry ~~loaded~~ loaded with petrol in Via Claudia (he destroyed another German lorry in Via Cavour); he ~~carried out~~ took part personally in the attack against the German column of S.S. in Via Rasella, in which 32 Germans were killed and more than ten others were wounded.

Bentivegna can assume full responsibility of these actions, the larger part of which were communicated by the clandestine newspapers "Tempo" and particularly "Unità", and the Italian Communist party approves them unconditionally as real and true acts of war against the Nazi-Fascists. The same must be said also about the ambush of Via Rasella, that Bentivegna accomplished with absolute disregard of the danger he was exposed to against a column of armed S.S. in full war order.

DECLASSIFIED
NND 785024
By NARA, Date

~~8~~ 7.

Owing to the exceptional personality of Bentivegna and all the modalities of the tragic incident in which Lt. Barbanti was to meet with his death, we are confident in an early ~~rele~~ release of Bentivegna from prison.

Roma. 5 July 1944.

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NND 785024
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94

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197

DECLASSIFIED
NND 785074
By NARA, Date

96

[illegible] DIVISION

L/C/[illegible]

30 August 1944

SUBJECT : Rosario BENTIVEGNA case.

TO : Major G. W. Battersby
Deputy Chief Public Safety Officer.

1. This is to assure you of immediate compliance with your request of 27 August 1944, in respect to the above.

2. I am grateful for the opportunity to be of rendering myself on this matter.

R. Stuart C. Hendrickson,
Major, A.U.S.
Regional Legal Officer.

RCH/T.

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By Lewis NARS, Date 5/28/74

~~CONFIDENTIAL~~

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186

199

DECLASSIFIED
Authority NND 785074
By NARA, Date

95

DEPARTMENT OF THE ARMY
THE ADJUTANT GENERAL CENTER
WASHINGTON, D.C. 20314

21 MAY 1973

DAAG-ASR-S (73031)

Mr. Daniel T. Goggin
Director, General Archives Division
Washington National Records Center, GSA
Washington, D. C. 20409

Dear Mr. Goggin:

I am returning the Allied Military Government court case involving Rosario Bentivegna, which you forwarded for review on 12 April 1973, on behalf of representatives of the Italian newspaper Il Messaggero in New York.

It has been determined that this document was properly declassified by OSD under the 2 May 1972 guidelines.

Also, there is no basis to withhold this document from release to the public under the provisions of the Freedom of Information Act.

Sincerely,

Cyrus H. Fraker
for S. J. POMRENZE
Chief, Office Management Division
TAGO

Inclosure
RG 331, Allied Commission
Allied Military Government,
Region IV, Legal Section,
Legal Case, 1944, #7762

DECLASSIFIED NND 785024 By NARA, Date

Rec'd Aug 1, 44

97

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

Provincia di Roma - Corte Generale Alleata

Nome dell'accusato: Rosario Bentivegna
Indirizzo dell'accusato: Via Torino 128, Roma
Data di arresto: 23 giugno 1944
Imputazione: omicidio
Data del dibattimento: 14 luglio 1944 e seguenti.
Data della sentenza: 22 luglio 1944
Condanna: 18 mesi di reclusione per il reato previsto dagli artt. 55- 589 - 62 n.2 cod.pen. italiano.

MOTIVI PER LA ISTANZA

1) doveva essere applicato l'art.52 del codice penale italiano. In base a tale articolo, il Bentivegna doveva essere assoluto.

La Corte Generale, con il suo verdetto, ha dichiarato che il Bentivegna, vedendo il Barbarisi strappare i manifesti, gli si rivolse in maniera "arrogante" ed "ostile"; che il Barbarisi rispose in maniera ugualmente ostile ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accadde il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur considerando questo, la Corte è convinta che l'atto del decedutto di estrarre la pistola, non era giustificato e costituiva una "offesa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere l'esattezza dell'argomentazione della Corte, salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giubba su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di uf

REGION IV CASE N° 776285

DECLASSIFIED
NND 785014
By NARA, Date

ciale di Polizia;

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito Comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione Nazionale;

c) il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua arbitraria azione, spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto del Barbarisi, che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna doveva necessariamente ritenere di essere in presenza di un elemento ostile della quinta colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici ~~xxxx~~ e di un partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 giugno era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Na=

REGION IV CASE N° 78762

DECLASSIFIED NND 785024 By NARA, Date

zionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata, eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato, quando si trovò dinanzi alla pistola del Barbarisi, poteva fronteggiare con altri mezzi la situazione, Secondo la Corte il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è, a nostro avviso, contraddetto dalle circostanze di causa e dallo spirito della legge italiana. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi - e aveva perciò diritto di difendersi -, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell' avversario, se non quella di reagire rapidamente con violenza.

Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il Bentivegna riuscì a prevenirlo facendo fuoco prima di lui. Del resto, questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla.

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto del Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi, invece, non si limitò all'estrazione dell'arma, ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei seguenti termini:

REGION IV CASE N° 7762

183

203

DECLASSIFIED NND 785074 By NARA, Date

" La Corte è convinta che (il Barbarisi) tirò fuori la pistola e "la puntò contro l'imputato". Un simile contegno non può essere spiegato che con l'intenzione di usare effettivamente l'arma contro il Bentivegna, il quale, se avesse atteso un attimo, avrebbe potuto cadere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco; e ciò è tanto vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo imminente e mortale. Nè la legge positiva italiana, nè il nostro costume morale impongono la fuga di fronte al pericolo; ma, a prescindere da tale osservazione, si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di uccidere da parte del Bentivegna, il quale ebbe una sola intenzione: quella generica di rispondere con adeguatezza di mezzi ad una minaccia, che si palesava estremamente grave ed immediata.

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragionevolmente nelle condizioni previste dall'art.52 del Codice penale.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovrebbe sempre riconoscere che il Bentivegna doveva ritenersi minacciato nella propria integrità fisica e costretto a reagire senza perdere tempo per non soccombere di fronte all'avversario. 182

La nostra legge riconosce lo stato soggettivo di legittima difesa altrimenti detto legittima difesa putativa, ponendo solo la condizione che la convinzione soggettiva sia basata su condizioni

REGION IV CASE N° 7762

DECLASSIFIED NND 785021 By NARA, Date

di fatto, che l'uomo normale apprezzerebbe in tal senso.-

Ora, chiunque si fosse trovato il 5 giugno, nelle condizioni in cui si trovò il Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale pericolo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso.-

Per queste considerazioni, riteniamo che il verdetto della Corte Generale debba ritenersi viziato da una intima contraddizione logica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.-

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze, applicando l'art.52 ed assolvendo il Bentivegna.-

2) La Corte Generale con il suo verdetto ha dichiarato che il Bentivegna ha agito in istato di legittima difesa, valutando però in modo inesatto, e perciò colposamente, la proporzione fra la reazione e l'offesa ed ha aggiunto doversi riconoscere che vi fu azione provocatoria da parte del Barbarisi.-

In conformità della legge italiana ha perciò ritenuto responsabile il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli artt. 589 e 62 n.2 del cod.pen. italiano.-

La Corte ha anche dichiarato nel suo verdetto di voler fare astrazione completa da considerazioni politiche e di volere giudicare l'imputato come un essere umano e considerare il deceduto come un essere umano.-

Con la sentenza, però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appare del tutto sproporzionata alla natura dell'episodio.-

Nel determinare la pena e nel rispondere all'istanza di sospensione della sua esecuzione ai sensi dell'art.163 del codice penale italiano, la Corte doveva attenersi ai criteri fissati nell'art.133 del lo stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato, ma ha acceduto alle richieste del P.M. proprio per quei motivi politici che aveva dichiarato di voler trascurare nella prima frase della motivazione della sua decisione.-

181

REGION IV CASE N° 7762

205

DECLASSIFIED
NND 785074
By NARA, Date

Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il benefi - cio della provocazione; ciò che fa notevolmenre ridurre la gravità del reato stesso e la misura della colpa, essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò, fino quasi all'annullamento, la sua entità.-

Detto ciò, si riconosce implicitamente la nessuna pericolosità dell'imputato, il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto l'azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.-

Non sembra perciò giusto attribuire, come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.-

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte.

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della pro - vocazione, è chiaro che il delitto colposo attribuito al Bentivegna non solo non può apparire tanto grave in sè da richiedere esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.-

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Il criterio dell'esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa della decisione della Corte, premessa nella quale si afferma di voler giudicare umanamente un essere umano.-

Ma, anche accettando il criterio dell'esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica, ecc.-

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati devono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante à stato compiuto.-

Ma noi vogliamo aggiungere un'ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena, attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.-

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.-

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire.-

Rosario Bentivegna è un incensurato; appartiene ad un'~~esta~~ onesta e patriottica famiglia. E' un giovane studioso del quale il Prof. Caronia, Pro-Rettore dell'Università di Roma, ha tessuto il più invidiabile elogio, sia dal punto di vista intellettuale ~~dhel~~ che dal punto di vista morale.- 173

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche che non dovevano essere trascurate perchè nei nove mesi che precedettero l'arrivo degli Alleati, egli fu uno di quei valorosi partigiani, ai quali ogni giorno si rivolge il Comando Supremo delle

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Authority NND 785071
By NARA, Date

Forze Alleate per suscitarne la combattività ed elogiarne il contributo di azione.-

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericoloso per l'ordine sociale e politico del suo Paese.-

Vogliamo perciò sperare che la sentenza della Corte Generale, che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del cod.penale (condanna condizionale), che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.-

Roma, 1° agosto 1944 -

Antonello
Cambber
Ed'Onofrio

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NND 785024
By NARA, Date

REMARKS BY THE COUR

Having read carefully through the attached Petition we see no reason to alter our view that the Accused was rightly convicted and that the sentence was certainly not excessive.

With regard to the conviction, we are of opinion that the question whether or not the Accused exceeded the bounds of legitimate self-defence was a question of fact, as to which the Court (which heard the evidence and saw the witnesses) was the best judge. We are satisfied on the evidence, to which we listened with great attention, that the Accused did exceed the bounds of legitimate self-defence, in the sense that the action which he took was unnecessarily violent, i.e. was out of proportion to the degree of offence offered. We adhere to the view expressed in our judgment that the mere fact that the deceased drew his pistol and pointed it at the Accused did not of itself indicate any immediate intention to fire, still less to kill. The evidence in fact points to the contrary conclusion, since the deceased did not in fact fire, although he clearly had the opportunity to do so, if his pistol was loaded (as to which there was no evidence), while it was pointed at the Accused. It is idle to assert that the Accused could not have reacted in any other way. For one thing, he could have spoken, and explained who he was and the reason for his interference. If shooting was necessary (which we, having heard the evidence, do not believe), he could have shot to wound and not to kill. For the above reasons we are of opinion that the Petition discloses no grounds for setting aside the conviction.

As to the sentence, the factors referred to in the Petition were all carefully considered and given their full weight. But for the mitigating circumstances, the good character of the Accused, and the part that he had played as an active partisan, we should have thought it right to impose a much heavier sentence. The Petition discloses no point of law which has not already been fully considered, and consequently we are of opinion that there is no legal ground for interfering with the sentence. We are not blind to the fact that there may be political reasons, of which we are not the appropriate judges, which might render a reduction of sentence desirable. As to this, it is suggested that before modifying the sentence on political grounds it would be wise to seek the views of the Regional Commissioner, who is responsible for the future maintenance of law and order in Rome, and who is in the best position to judge the probable political repercussions of any such action.

H. C. Lickiss
Colonel
President.

177

Members.

Major

Note by Lt.Col. I.G.H. CAMPBELL, Member of the Court

I concur with all the above remarks except the two concluding sentences, which I consider out of place in "Remarks by the Court". As they

(over)

DECLASSIFIED
NND 785024
By NARA, Date

have been inserted I wish to make the following comments thereon :-

a) These sentences may create the impression that the sentence of the Court was imposed with an idea, or hope, in the mind of the Court that it would be reduced on political grounds. Such an impression would be false- at least, so far as I am concerned.

b) If the reviewing authority is considering reduction on political grounds, I do not think it would be wise to seek the view of the Regional Commissioner responsible for the future maintainance of law and order in ROME. This case has had widespread publicity : presumably any reduction would receive equal publicity. It is necessary, therefore, to judge "the probable political repercussions" not merely in ROME but throughout Italy now liberated and yet to be liberated.

I. Campbell Lt Col

I. G. H. CAMPBELL,
Lt. Colonel,
Member.

Supplemental Remarks of Major ROBERT C. HENDRICKSON.
Member of the Court.

Since it is quite clear from the Note appended to the remarks of the Court, by Lt. Col. CAMPBELL, that the two concluding sentences to which I subscribed as a member of the Court, are subject to conflicting interpretation, I feel constrained to add that , in my considered opinion, there is no factor involved in this issue which would justify a modification or reduction of the sentence; in fact, I hold strongly to the view that the sentence imposed was exceedingly, if not excessively mild.

Robert C. Hendrickson

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
Member.

DECLASSIFIED
NND 785074
By NARA, Date

107

Rec'd Judge Aug 1, 44

FORM. N.° 11

GOVERNO MILITARE ALLEATO

ISTANZA PER REVISIONE DI SENTENZA

(In uso per la revisione delle cause giudicate davanti i Tribunali Militari o Corti Italiane)

NOTA: Questo stampato deve essere presentato nel termine di 30 giorni dalla sentenza.

PROVINCIA DI Roma

Tribunale Corte Generale Alleata

Nome dell'accusato Rosario Bentivegna

Indirizzo dell'accusato Via Torino 128, Roma

Data di arresto 23 giugno 194

Imputazione omicidio

Data del dibattimento 14 luglio 1944 e seguenti Data della sentenza 22 luglio 1944

Condanna per il reato previsto dagli art.5, 56 cpv. n.2 cod.pen.it. a 18 mesi di reclusione

Nome del Giudice del Tribunale

Motivi per la istanza 1) doveva essere applicato l'art.52 del cod.pen. In base a tale articolo, il Bentivegna doveva essere assoluto. - ------

La Corte Generale, con il suo verdetto, ha dichiarato che il Bentivegna vedendo il Barbarisi strappare i manifesti, gli si rivolse in maniera "arrogante" ed "ostile"; che il Barbarisi rispose in maniera ugualmente ostile

Data I agosto 194 (vedere fogli allegati)

(Firma dell'accusato o di un suo [illegible])

OSSERVAZIONI DEL GIUDICE CHE HA PRESIEDUTO AL PROCESSO, O DELL'UFFICIALE SUPERIORE ADDETTO ALLA GIUSTIZIA DELLA PROVINCIA, OPPURE DEL PROCURATORE, SE NECESSARIO

See Remarks of the Court on separate sheet.

Data 4 August 1944

R. L. Lillner
Colonel
(Firma del giudice)
President.

DECISIONE DELL'UFFICIALE CAPO DEGLI AFFARI CIVILI

176

Data

NOTA: Questo stampato-lettera deve essere sottoscritto dall'Ufficiale Superiore addetto alla Giustizia della Provincia.

REGION IV CASE N° 7762

211

DECLASSIFIED NND 785014 By NARA, Date

ed estrasse la pistola, puntandola contro il Bentivegna; che questi, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul Barbarisi.

La Corte ha affermato anche di non dimenticare che il fatto accadde il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità e i sentimenti eccitati, ed ha aggiunto: "pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola, non era giustificato e costituiva una offesa ingiusta secondo l'art.52 del cod.pen.".

Fino a questo punto si può riconoscere la esattezza della argomentazione della Corte salvo le seguenti osservazioni:

a) Barbarisi vestiva in modo da non potere essere riconosciuto come ufficiale in attività di servizio perchè portava la giacca su di un braccio, aveva le maniche della camicia rimboccate, non metteva in mostra visibilmente segni distintivi della sua qualità di ufficiale di Polizia.

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di dispregio, alcuni manifesti patriottici, inneggianti agli Alleati ed al Partito comunista, ad uno cioè dei Partiti organizzati nel Comitato di Liberazione nazionale.

c) Il Bentivegna, il giorno 5 giugno, come volontario della libertà, era in servizio di ordine pubblico alle dipendenze del Comitato di Liberazione Nazionale ed aveva il dovere d'intervenire contro chiunque, con il proprio comportamento, potesse causare incidenti o comunque manifestare sentimenti ostili contro l'evento storico della liberazione di Roma ad opera delle truppe Alleate o contro le disposizioni del Comitato di Liberazione Nazionale.

Il fatto della causa quindi, alla stregua delle stesse considerazioni della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il legittimo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di stracciare i manifesti affissi nelle edicole di Via Tre Cannelle ed anzichè scusarsi per la sua azione arbitraria spiegandola eventualmente come dovuta ad un errore o ad un malinteso, estrasse senz'altro la pistola e la puntò sul petto di Rosario Bentivegna.

Stando così le cose, la Corte avrebbe dovuto pervenire alla logica ed unica conseguenza che il Bentivegna reagì contro l'atto ingiusto

DECLASSIFIED
NND 785074
By NARA, Date

del Barbarisi, che costituiva grave minaccia e rappresentava perciò un pericolo attuale per la propria fisica integrità, facendo fuoco sul Barbarisi; e riconoscere che il Bentivegna Rosario doveva necessariamente ritenere di essere in presenza di un elemento ostile della V colonna perchè la minaccia a mano armata seguiva un gesto non equivoco di ostilità contro i manifesti patriottici e di un Partito aderente al Comitato di Liberazione Nazionale, essendo provato che il Bentivegna il giorno 5 era in servizio di ordine pubblico proprio per disposizione del Comitato di Liberazione Nazionale.

La Corte invece ha affermato di essere convinta che la reazione dell'imputato sia stata ingiustificata eccedendo colposamente i limiti della difesa proporzionata all'offesa. Secondo la Corte l'imputato quando si trovò dinanzi alla pistola del Barbarisi poteva fronteggiare con altri mezzi la situazione senza far fuoco uccidendo senz'altro l'avversario. Secondo la Corte il fatto che il Barbarisi estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare, non sussistendo nessuna prova che avesse tale intenzione nè essendovi testimonianza che fossero scambiate parole dalle quali potesse risultare tale intenzione. Secondo la Corte infine l'imputato avrebbe avuto a sua disposizione altre vie oltre quella estrema da lui scelta.

Il ragionamento adottato dalla Corte è a nostro avviso contraddetto dalle circostanze di causa e dallo spirito della legge italiana applicata nel caso Bentivegna. Se è esatto che il Barbarisi estrasse la pistola e la puntò in direzione del cuore del Bentivegna, se è esatto che tale gesto del Barbarisi fu ingiusto ed illegittimo, è parimenti esatto che il ricorrente non solo era minacciato nella sua vita dal gesto del Barbarisi e aveva perciò diritto di difendersi, ma non aveva altra via per respingere il pericolo rappresentato dal gesto dell'avversario, se non quella di reagire rapidamente con violenza. 174

Sembra erronea la indagine fatta dalla Corte sulla presunta intenzione del Barbarisi e sembra inesatta l'affermazione che la estrazione della pistola non significasse affatto intenzione di sparare. Se il Barbarisi non ha sparato ciò è dovuto al fatto che il

DECLASSIFIED NND 785024

Bentivegna Rosario riuscì a prevenirlo facendo fuoco prima di lui. Del resto questa è la situazione di ogni caso di legittima difesa perchè in tanto si può respingere un pericolo in quanto vi si oppone una rapida e perciò tempestiva violenza che lo annulla.

Se il Barbarisi non avesse avuto intenzione di sparare, non avrebbe estratto la rivoltella puntandola al petto di Bentivegna, ma si sarebbe limitato ad un gesto vagamente minaccioso. Il Barbarisi non si limitò alla estrazione dell'arma, ma puntò questa contro il Bentivegna. Ciò è riconosciuto dalla Corte nei termini seguenti: "La Corte è convinta che (Barbarisi) tirò fuori la pistola e la "puntò contro l'imputato." Un simile contegno non può essere spiegato che con la intenzione di usare effettivamente l'arma contro il Bentivegna il quale, se avesse atteso un attimo, avrebbe potuto cadere vittima del suo avversario.

Non sembra poi giustificata l'affermazione della Corte che il Bentivegna aveva altra via per fronteggiare la situazione senza far fuoco ; tanto è vero che la Corte non indica quali fossero i mezzi a disposizione del Bentivegna per sottrarsi al pericolo imminente e mortale. Nè la legge positiva italiana, nè il nostro costume morale impongono la fuga di fronte al pericolo; ma a prescindere da tale osservazione si deve anche considerare che neppure la fuga avrebbe potuto salvare il Bentivegna dal pericolo imminente perchè contro il fuggente si sarebbe potuta esercitare più efficace ancora l'azione violenta dell'aggressore.

La Corte non ha poi tenuto conto delle modalità della reazione del Bentivegna che avrebbero dovuto ingenerare dubbio anche sulla sua intenzione. Non si può infatti dire provata la volontà di uccidere da parte del Bentivegna il quale ebbe una sola intenzione: quella generica di rispondere con adeguatezza di mezzi ad una minaccia che si palesava estremamente grave ed immediata. 173

Ma oltre l'esame obiettivo della situazione, era pure necessario considerare se il Bentivegna non abbia legittimamente ritenuto di essere in grave ed imminente pericolo e non si sia sentito ragionevolmente nelle condizioni previste dall'art.52 del cod.pen.

Se anche fosse vero che il Barbarisi non aveva intenzione di far fuoco - e ciò nessuno poteva provarlo nè lo ha provato - si dovrebbe sempre riconoscere che il Bentivegna doveva ritenersi minaccia=

DECLASSIFIED
NND 785024
By NARA, Date

to nella propria integrità fisica e costretto a reagire senza perdere tempo per non soccombere di fronte all'avversario.

La nostra legge riconosce lo stato soggettivo di legittima difesa altrimenti detto legittima difesa putativa; ponendo solo la condizione che la convinzione soggettiva sia basata su condizioni di fatto che l'uomo normale apprezzerebbe in tal senso.

Ora, chiunque si fosse trovato il 5 giugno, nelle condizioni in cui si trovò Rosario Bentivegna, avrebbe avuto la netta sensazione di correre un gravissimo pericolo e avrebbe fronteggiato tale pericolo nel solo modo adeguato: ricorrendo all'arma che era in suo possesso

Per queste considerazioni riteniamo che il verdetto della Corte Generale debba ritenersi viziato da una intima contraddizione logica e non rappresenti una esatta interpretazione giuridica della norma fissata nell'art.52 del codice penale italiano.

Chiediamo perciò che l'Ufficio Superiore, riconoscendo esatte le considerazioni in fatto adottate dalla Corte Generale, ne tragga le logiche e giuridiche conseguenze applicando l'art.52 ed assolvendo il Bentivegna.

2) La Corte Generale con il suo verdetto ha dichiarato che il Bentivegna ha agito in istato di legittima difesa valutando però in modo inesatto e perciò colposamente, la proporzione fra la reazione e l'offesa ed ha aggiunto doversi riconoscere che vi fu azione provocatoria da parte del Barbarisi.

In conformità della legge italiana ha perciò ritenuto responsabile il Bentivegna di omicidio colposo col concorso dell'attenuante della provocazione ai termini degli art.589 e 62 n.2 del cod.pen.italiano.

La Corte ha anche dichiarato nel suo verdetto di volere fare astrazione completa da considerazioni politiche e di volere giudicare l'imputato come un essere umano e considerare il deceduto come un essere umano.

172

Con la sentenza però, la Corte ha contraddetto sostanzialmente quanto aveva dichiarato nel verdetto, determinando una pena che appare del tutto sproporzionata alla natura dell'episodio.

Nel determinare la pena e nel rispondere alla istanza di sospensione della sua esecuzione a termini dell'art.163 del codice penale italiano; la Corte doveva attenersi ai criteri fissati nell'art.133

DECLASSIFIED
NND 785024
By NARA, Date

dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato ma ha acceduto alla richiesta del P.M. proprio per quei motivi politici che aveva dichiarato di volere trascurare nella prima frase della motivazione del suo verdetto.

Non si doveva dimenticare che il Bentivegna è stato ritenuto colpevole di un reato colposo e che gli è stato concesso anche il beneficio della provocazione; ciò che fa notevolmente ridurre la gravità del reato stesso e la misura della colpa essendo evidente che la provocazione della vittima ha influenza determinante sulla colpa e ne attenua perciò fino quasi all'annullamento, la sua entità.

Detto ciò, si riconosce implicitamente la nessuna pericolosità dell'imputato il quale, in tanto può essere caduto in colpa, in quanto circostanze eccezionali a ciò lo hanno indotto e in quanto la azione provocatrice della vittima gli ha tolto la possibilità di una più esatta valutazione dei mezzi necessari per respingere un gravissimo pericolo. La provocazione attenua il reato in considerazione del turbamento dell'animo che essa determina: tale turbamento non può non influire sulla valutazione delle forze in contrasto, valutazione che deve essere immediata e seguita dalla azione senza soluzione di continuità.

Non sembra perciò giusto attribuire come fece il P.M., in ciò seguito dalla Corte, un notevole grado di pericolosità, al Bentivegna che in tanto ricorse alla violenza in quanto vi fu costretto da una situazione che avrebbe in ogni uomo normale suscitata la stessa reazione.

Nè sembra accettabile il criterio della esemplarità della condanna perchè la natura colposa del delitto attribuito al Bentivegna malamente aderisce a tale criterio di esemplarità ammesso dalla Corte.

171

In materia colposa non si può vedere la pericolosità se non nel caso specifico e la esemplarità della pena deve essere motivata sulla base di considerazioni relative alla particolare natura dei delitti colposi. Avendo la Corte accordato anche il beneficio della provocazione, è chiaro che il delitto colposo attribuito al Bentivegna

DECLASSIFIED
NND 785024
NARA, Date

non solo non può apparire tanto grave in sè da richiedere esemplarità di pena ma deve invece essere giudicato tenue proprio per il fatto che fu determinato dalla azione ingiusta della vittima e da una sovraeccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.

Il criterio della esemplarità della pena finisce per determinare una valutazione ingiusta nei riguardi del singolo imputato e male si accorda con la serena premessa del verdetto della Corte, premessa nella quale si afferma di volere giudicare umanamente un essere umano. Ma anche accettando il criterio della esemplarità, si deve riconoscere che l'episodio non denuncia affatto, come ha mostrato di ritenere il P.M., seguito dalla Corte, un particolare stato di disordine della vita cittadina, una proclività alla rissa dei cittadini romani, uno scarso senso di disciplina civica ecc.

L'episodio rimane inquadrato nella eccezionalità di un momento particolarmente delicato della vita della città di Roma; ma gli Alleati debbono riconoscere che questa città non ha imposto loro gravi problemi di ordine pubblico; ma ha dimostrato una concordia patriottica ed una disciplina politica contro la quale nessun tentativo rilevante è stato compiuto.

Ma noi vogliamo aggiungere una ultima considerazione:

L'art.133 del cod.pen.italiano, fissando i criteri di valutazione per la determinazione della pena; attribuisce particolare importanza ai precedenti dell'imputato ed ai motivi che hanno determinato la sua azione.

L'art.163 poi del cod.penale deve essere messo in relazione con il 133 e consente la sospensione dell'esecuzione della condanna quando si ha motivo di ritenere che l'imputato non ricadrà nel delitto.

Rosario Bentivegna meritava un trattamento di maggiore indulgenza e non doveva essere lasciato più a lungo in carcere, con danno gravissimo dei suoi studi e del suo avvenire.

Rosario Bentivegna è un incensurato; appartiene ad una onesta e patriottica famiglia. E' un giovane studioso del quale il Prof. Caronia Pro Rettore della Università di Roma ha tessuto il più invidiabile elogio sia dal punto di vista intellettuale che dal punto di vista morale.

Ma Rosario Bentivegna ha anche tali benemerenze patriottiche

DECLASSIFIED
NND 785014
By NARA, Date

114

che non dovevano essere trascurate perchè nei nove mesi che precedettero l'arrivo degli Alleati egli fu uno di quei valorosi partigiani ai quali ogni giorno si rivolge il Comando Supremo delle Forze Alleato per suscitarne la combattività ed elogiarne il contributo di azione.

Un giovane poco più che ventenne, in una atmosfera ardente di combattimento e di patriottismo, se può essere caduto in qualche errore di valutazione, non può essere considerato nè un delinquente nè un uomo pericolo per l'ordine sociale e politico del suo paese.

Vogliamo perciò sperare che la sentenza della Corte Generale che pure ci ha profondamente soddisfatti per il riconoscimento sostanziale della legittimità della reazione compiuta da Rosario Bentivegna, venga almeno modificata per quel che si riferisce alla misura della pena ed alla applicazione dell'art.163 del codice penale (condanna condizionale) che contiene una disposizione saggia e prudente a favore di coloro che offrono garanzia di ritornare rapidamente entro i limiti della legalità.

Roma,I agosto 1944

Pertini
Saragat
Scoccimarro

169

DECLASSIFIED
NND 785024
By NARA, Date

115

FORM No. 11

ALLIED MILITARY GOVERNMENT

APPLICATION FOR REVIEW OF SENTENCE

(To be used for Review of Cases tried in either Allied Military or Italian Courts)

NOTE: This form must be filed within 30 days of Sentence.

PROVINCE OF .....

..... COURT OF .....

Name of Accused .....

Address of Accused .....

Date of Arrest .....

Charge .....

.....

Date of Trial ..... Date of Sentence .....

Sentence .....

Name of Judge and Court .....

.....

Reasons for Application .....

.....

.....

.....

Date ..... 194....

.....
(Signature of Accused or of his Attorney)

REMARKS BY TRIAL JUDGE, PROVINCIAL SENIOR LEGAL OFFICER, OR PROCURATORE, IF APPLICABLE.

.....

.....

.....

Date ..... 194....

.....
(Signature and Description

168

DECISION OF CHIEF CIVIL AFFAIRS OFFICER

.....

.....

.....

Date ..... 194....

.....

NOTE: This form will be submitted to the Senior Legal Officer of the Province.

1943 — Napoli, R. Tip. Ulannini

219

DECLASSIFIED
NND 785074
By NARA, Date

(File)

al
Ministero Grazia e Giustizia
Roma.

Il sottoscritto, ROSARIO BENTIVEGNA, fu Vincenzo, ~~[illegible]~~ a di de Somma Valentina, nato a Roma il 22-6-1922, domiciliato a Roma ~~[illegible]~~ in Piazza Foro Traiano, 1 a chiede copia della sentenza emanata nel l'agosto del 1944 dall'Alta Corte Militare Alleata, ed in cui, in seguito a revisione del processo, veniva assolto dall'imputazione di omicidio preterintenzionale nella persona del Ten. Giorgio Barbarini, con la formula piena della ~~legittima~~ legittima difesa.
Si richiede per uso di concorso.
Con osservanza
Roma, 10 settembre 1947

Rosario Bentivegna

CASE RECORD

Si trasmette l'unita richiesta con preghiera di volere inviare urgentemente detta copia di sentenza

10-9-47

L'ufficiale di collegamento
Thomas

166

DECLASSIFIED
NND 785024
By NARA, Date

2274 117

Form No. 8

ALLIED MILITARY GOVERNMENT

PROCEEDINGS OF AN ALLIED MILITARY COURT

Held at The ex Governatorato of Rome.

on the 14th day of July 194 4. and succeeding days.

Before Col. H.G. Willmer. Pres. / Lt Col. J Jan Campbell. Member / Maj. R.C. Hendrickson Member. } Constituting a General Military Court. (Name and rank of President and/ or Magistrate constituting the Court).

REFERENCE No. Avvocato Di Segni Ruggero sat with the Court as an Assessor.

ACCUSED

Name: Beintivegna Roberto di Vincenzo

Address: Via Torino 122. Roma.

Description: Single

Occupation: Medical Student

Age: 22

INTERPRETER

Name Cpl. Hugo Tellona. is duly sworn

PROSECUTING OFFICER

Name: 2nd Lt. L. A Sabatino.

ADVOCATE FOR ACCUSED

Name and Address Avv. Corrado Perris
Avv. Adelmo Niccolaj
Avv. Giulio Bonali D'Arezzo.

CHARGE (S) 164

(This space need not be completed if a copy of the Summons or charge sheet is attached).

Charge Sheet attached.

REGION IV CASE No 7762

221

DECLASSIFIED
Authority NND 785074
By NARA, Date

1. The evidence, any statements by the prosecution and defence before sentence, and any opinion the Court wishes to record as to its findings will be written or typed on this and the following page. When the length of the evidence requires, further sheets of paper serially numbered will be inserted in this file.

2. This record will be signed by the President and members of the Court.

---

14 July 1944.

The Court assembled at 0955 hours.

The Convening Order was read.

The Interpreter was sworn.

The Accused for the Defence are present in person in this Court.

In answer to position by the Court Lt. Sabatino submits that a long term of imprisonment would be the maximum sentence.

Accused is arraigned, and pleads "not guilty".

Adv. Corrado objects to the jurisdiction, and applies that the case be heard by an Italian Court. Allied Proclamations had not yet come into effect at the time of the alleged offence.

Court rules that case must proceed, with liberty to Defence to renew this application at any stage, if on the evidence given it appears that there are good grounds for transfer to an Italian Court.

Lieut. Sabatino

Prosecution will show that deceased was a member of Guardia di Finanza, and that he was working for the Allies when shot. He wore distinguishing marks on his clothing to show he was working under Allied authority. Deceased attempted to remove certain posters that had been affixed to the walls in this city. Accused became disturbed that deceased was attempting to remove posters. Accused asked him what he was doing. Deceased wanted to know who accused was and why he asked the question. Accused without explanation opened fire and inflicted fatal injuries on deceased. The homicide was unlawful and without provocation.

DECLASSIFIED
NND 785024
By NARA, Date

119

Rec'd July 13'44

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

SUBJECT : Order convening General Military Court.

In pursuance of the power conferred upon me by the appointment dated 1st. July 1944

I hereby DIRECT that the General Military Court shall meet at the Palace of Justice at 0930 hours on Friday the 14 day of July 1944 and such other days as may be necessary for the trial of the offences brought before it AND that the composition of the Court (in compliance with such order) shall be as follows:

Col. H. G. WILLMER	President
Lt. Col. IAN CAMPBELL	Member
Major ROBERT C. HENDRICKSON	Member

Dated 12 July 1944

Charles Poletti
CHARLES POLETTI
Col. A.U.S.
Regional Commissioner.

163

223

120

Fulle

Esibito 6 H.h. 1 Ann Comune

CASELLARIO GIUDIZIARIO

PROCURA DEL RE IMPERATORE DI ROMA

CERTIFICATO GENERALE

Al nome di Bentivegna Mario

detto fu Vincenzo di e fu

nato il in

Circondario o Stato di

Sulla richiesta della Corte Generale Alleata

per motivo di affari

si attesta che in questo Casellario Giudiziale risulta:

NULLA

ROMA LI 12 LUG. 1944

IL SEGRETARIO

SELLANI PROCURA DEL RE

162

Stamperia Reale di Roma (365-s)

DECLASSIFIED NND 785024 By NARA, Date

224

DECLASSIFIED
N.D. 785027

Verbale per l'uccisione di un sottotenente avvenuta il 5/6/44 alle ore 24,30 in via Tre Cannelle.

Il sottoscritto Sergente Maggiore Alessandri Virgilio di Cesare e di Giovannini Annetta nato a Roma il 22/2/910 arruolato nella forza di polizia con terza qualifica ufficiale dell'ufficio affermo quanto segue.

Ferino in via IV novembre angolo via Tre Cannelle voltando le spalle alla detta via, udii allontanarsi dal bastoni vidi un ~~[illegible]~~ individuo vestito da frigio che mi voltava le spalle puntare il braccio in direzione senza fuoco e fare fuoco tre o quattro volte. Il militare che fu ritenuto essere un sottotenente cadde in istato di arresto. Interrogato affermato lo sparatore che aveva sparato dichiarò di chiamarsi affermo di cognome Bentivegna Rosario fu Vincenzo e di De Simone Valentina abitante in via Torino 122 nato il 22/6/922. Il Bentivegna era in tipo quella con barbetta corta e nera.

Al mio sentire per l'atto il Bentivegna ~~[illegible]~~ faceva parte del P.C.I. n° 6577 in servizio presso il finale dell'Unità (vecchio Lavoro Fascista in via IV novembre) affermo di aver sorpreso il sottotenente dell'atto di strappare i fogli murali del finale dell'Unità e redarguitolo si vide puntare la rivoltella e per difesa di aver fatto

161

DECLASSIFIED
NND 785074
By NARA, Date

di avere fatto rifugio immediatamente dopo l'uccisione del fatto con la Signorina Cappani Carla fu arrestato e di Tamburini Ulario nato a Roma il 7/12/1920 abitante in Foro Traiano 1, [illegible] in Roma, [illegible] C. [illegible] nella redazione del detto giornale erano [illegible] n. 1 fece [illegible] nella redazione del giornale P.G. Terenzi Umberto di Giuseppe e [illegible] nato a Roma il 17/4/909 abitante in Via Foperano 15.

Note: nella [illegible] sottotenente carabinieri [illegible] nessun pistola. La Signorina Cappani Carla affermò di avere veduto il sottotenente [illegible] e [illegible] fogli [illegible].

Dovendosi detto autore intervistare per [illegible] del sottotenente [illegible] fu [illegible] dal P. Terenzi Umberto, [illegible] Tolto dalla strada dagli uomini del [illegible] del giornale. In [illegible] di quanto sopra

Sup. Mag. Alessandri Virgilio

123

COMMISSARIATO P. S. MAGNANAPOLI

Roma, li 25.6.944

N. 01000.Gab.

Risp. a N.°

OGGETTO FONOGRAMMA INTERNO

AL COMANDO ALLEATO =DIV.DI P.S.
Comando Zona di Roma Tel 67324
e.p.c., ALLA R.QUESTURA
ROMA

In seguito alll'annuncio pubblicato suo quotidiani locali relativo alla uccisione di un Tenente di finanza avvenuto il 5 giugno 944 in via delle Tre Cannelle si è spontaneamente presentato in questo Ufficio il Sig.Alessandri Virgilio di Cesare e di Giovannini Aurelia, nato a Roma il 22.2.910, abit'in via dei Pastini 133, il quale ha dichiarato di essere stato presente alla scena e di poter dare esaurienti ragguagli per il rintraccio dell'uccisore che egli assume essere tal BENTIVEGNA Rosario.

Faccio accompagnare questo codesto Comando l'Allessandri per gli ulteriori incombenti.

IL COMMISSARIO CAPO DI P.S.
(F.Cacace)

DECLASSIFICATO NWD 72-50 NARA, Date 4/1/76

DECLASSIFIED
NND 785024
By NARA, Date

Report for the killing of a sub-Lieutenant happened on the 5th Juin 1944 at 14.30 hours in Via Tre Cannelle.

I undersigned Sergeant Major Allesandri Virgilio, son of Cesare and Giovannini Amelia, born in Roma on 22nd Febr. 1910, member of the Police Forces with card and band N°12719 of the Group Menotti, state the following:

Standing in Via IV Novembre at the corner with Via Tre Cannelle, turning my shoulders to the mentioned street, I heard to quarrel, I turned round and saw a gray dressed man, who was turning his back to me, to point his arm to a military man without jacket and fire three or four times. The military man who later resulted to be a sub-Lieutenant fell immediately on his back. The man who shooted was stopped, he had no documents, he said his name was Bentivegna Rosario, son of Vincenzo (dead) and De Somma Valentina living at Via Torino 122, born on 22nd Juin 1922. The Bentivegna is a lithe man with a short and black smal beard. On his defence for the action, the Bentivegna, who wore a band of the P.C.I. (Italian Communist Party) N°6577 on duty at the newspaper L'Unità (previous "Lavoro Fascista" at Via IV Novembre), says of having surprised the sub-Lieutenant in the act of tearing the wall sheets of the newspaper L'Unità and having rebuked him he saw to point the pistol to him and for defence he fired immediately. A witness of the incident was Miss Capponi Carla, son of Giuseppe (dead) and Tamburri Maria, born in Rome on 7 Dec. 1920, living at Foro Traiano 1, she also armed with a pistol. Also this young lady was without documents and a meber of the P.C.I., on guard of the newspaper L'Unità. They were leaded by me to the editorship of the above mentioned newspaper for their identification, and the Commander of the Guard of the Newspaper Mr. Terenzi Amerigo son of Giuseppe and Olimpia Gori, born in Roma on 17 Apr. 1909, living at Via Fogliano 15, guarantied for them.

NOTES : In the hand and the proximity of the fallen sub-Lieutenant no pistol was found by me. Miss Capponi Carla states of having seen the sub-Lieutenant to point the arm to Bentivegna and that he was rebuked because he was tearing the above mentioned wall sheets.

As I had to go away immediately because of my duty, I was told by Mr. Terenzi Amerigo that the body of the sub-Lieutenant would be removed from the street by the men of the guard of the newspaper.

By truth of what above said
Signed: Serg. Magg. Alessandri Virgilio.

- - - - - - - - - - - -

Commissariato P.S.
Magnanapoli
N.01000Gab.
Object: Internal Phonogramm

Rome 23 Juin 1944

To The Allied Command = P.S. Division
Command Rome Area =
and for knowledge to the R. Questura
R O M A

Following the notices printed in the newspaper concerning the killing of a sub-Lieutenant of the Finance Guard happened on the 5 Juin 1944 in Via Tre Cannelle, Mr. Alessandri Virgilio son of Cesare and Giovannini Aurelia, born in Rome on 22 Febr. 1910, living at Via dei Pastini 133, has willingly come to this Office and stated to have been present to the scene and to be able to give sufficient information for finding the killer whom he says to be Bentivegna Rosario.

I let accompany the Alessandri to this Office for the further proceeding.

The Chief Commissary of P.S.
F. Cacace.

DECLASSIFIED
NND 785021
By NARA, Date

Notes by Avv. Di Segni, Assessor

CASE OF BENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by th-e article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indi= cated by the art. 576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indica= ted by the articles 61 and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art. 61 N°10 : having committed the act against ~~the~~ a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administra= tive or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service.

If the answers are negative, the aggravating circumstance of the

DECLASSIFIED
NND 785024
By NARA, Date

art.6I N°IO does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES.The extenuating circumstances which,hypothetically,might be concerned in this case are the following :

A)Art.62 N°1 : having acted for motives which have a special moral or social value.

B) Art.62 N°2 : having reacted when in a state of anger,caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury.It is also required the necessity of the defence,so that the danger or the damage could non be avoided unless with the defence.Besides that,the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the necessity,it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imprisonment not inferior to 2I years (Art.575).

If there is an aggravating circumstance,the punishment which would be imposed for the committed crime is increased as far as a third.In no case,the period of imprisonment can exceed 30 years (Art.64).

If there is an extenuating circumstance the punishment is diminished of a period not exceeding a third (Art.65).Existing more than one extenuating circumstance,the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum=

DECLASSIFIED
Authority NND 785074
By NARA, Date

stances ,the Judges decide if are prevailing the one or the others, and will consider only the prevailing ones.They can also consider them equivalent,so that no augment or diminution will took place. (art. 69).

DECLASSIFIED
Authority NND 760024
By NARA, Date

Evidence for the Prosecution

First Witness (Sworn)

Lieut. Filippi Silvestro, officer of the Guardia di Finanza. About 1.0 p.m. on 5 June I was at our officer's mess, in via Regina Elena, Rome. Some other officers were with me. I remember 2/Lt. Lebne was there, also 2/Lt. Iannotta, also Lieut. Icalzi. There were others, but I don't remember who. 2/Lieut. Barbarisi was also there. I had known him since October 1943. He was in uniform, without a blouse; he had on his belt, and a white band on his arm with words in English written on it – except that I saw "A.M.G." on it. I spoke with 2/Lt. Barbarisi. I saw him again that afternoon. About 1600 hours I was on duty when I was informed by Maresciallo that a 2/Lieut. had been killed. At 1630 I saw Barbarisi in Via Tre Cannelle. He was lying on the ground dead and covered with a blanket. My colleagues had examined the dead. I did not remove the cover myself. I never saw his face. When they raised the body to take it away, I recognised who it was by the uniform and by the colour of his hair.

No xxtion

155

Second Witness (Sworn)

Fontana Mario Luigi, Assistant at the Pathological Institute. I am a qualified medical practitioner. I saw the body the day I was authorised by Lieut. Greenhill to carry out an autopsy. I was told it was the body of Lt. Barbarisi. It was a man of 25-26 years old. It was the attendants who told me who it was, and also the Captain, I believe. I carried out an autopsy. Death had taken place about 48 hours before. The autopsy was on 7 June about 1500 hours. Death was caused by acute anaemia caused by a bullet which penetrated on the top part of the left lung

1.

DECLASSIFIED
Authority NND 785074
By NARA, Date

of the thorax at about 2 cm. from the sternum; on the first intercostal space, the one an oval wound of 8 x 12 mm., on the left side. Death was caused by the bullet, which perforated the aorta, causing loss of about 3 litres of blood. Death must have been very rapid, because of heavy internal haemorrhage, within about 15 minutes. After a maximum of 5 minutes he would lose consciousness, because of the brain not being fed with blood. The shot must have been fired at a short distance. This is shown by the fact that it caused a large wound, and by the distance the bullet travelled in the body. The range must have been 1/2 to 1 metre.

XXd

I found one bullet only. I should say that the bullet came from slightly above, and obliquely, from front to rear. The inclination may be due to the fact that the bullet struck a bone in the thorax. The body was partially undressed, the upper part wholly. The autopsy was limited to the thorax and the abdomen, because what I found there fully explained the cause of death. We stripped the body completely before examination.

No Re-exam.

By the Court

I did not find a bullet – the bullet had passed right through the body. I merely found a hole. I found no other wounds in the body at all.

Recd (with leave)

There was a wound of entrance, and a wound of exit.

(Adjourned 1200 – 1330 hours).

DECLASSIFIED
Authority NND 785024
By NARA, Date

Third Witness. (Sworn)

Lieut. Tamaskin Aldo, of the Guardia Finanza. About 1.0 p.m. on 5 June I was at the Officers' Mess in Via Regina Elena, Rome. Lt. Filippi, Lt. Calzi & Lt. Barbarisi were with me. I saw Barbarisi again that afternoon. He was dead. I saw him about 1615 hours in Via Tre Cannelle. His body was on the ground. I saw his face and recognised it as that of Lt. Barbarisi. The body was covered by a blanket – I removed the blanket, saw the body was rigid, and to all appearances he was dead. I had talked to Lt. Barbarisi that afternoon. When I saw his body in the street, he had boots, trousers, shirt, belt and a band on his left sleeve. He had the band on in mess at 1.0 o'clock. I was able to read some words – "Civil Police" – I am not certain. He had the same armband when I saw him dead.

xxd

He did not wear a blouse in mess. He had no blouse when I saw the body. I don't remember whether he was carrying a blouse over his arm in mess. The blouse must have been there near the body, because when they removed the body one of those present picked up a blouse. When I saw him in mess he had his shirt sleeves rolled up. When I saw the body, the shirt sleeves were still rolled up. The white band was on the upper part of the arm, and the sleeve was rolled up to the elbow. He brought Lieut. Barbarisi to the station, and with a colleague I made an inventory of that which belonged to the deceased. The list has been given, together with the articles, to the authorities of your organisation, and I believe that everything was then handed over to the deceased's mother. I heard that later from deceased's mother. I don't know for certain if all the articles & clothes have been returned to her. You can find out from the linesmen who took

DECLASSIFIED
NND 785024
By NARA, Date

delivery, or from the accused's mother. There was not a hand on the sleeve of Lt. Barbarisi's House. I examined the House in the hospital where we took the body, and I looked in the pockets. If there were hand on the sleeve I should have noticed it. There were other words besides "Civil Police", but I don't remember what. When I saw Lt. Barbarisi he was wearing his belt and holster, but I did not notice whether there was a pistol in the holster. I believe that the body was buried with the shirt; I heard that his mother was looking for his handker and pounced in unexpectedly in the pocket of the shirt.

No Rexam

Fourth Witness (Sworn)

Castelli Alberto, commander of the Patriot's Group. I live at Via XX Settembre 98. About 2.30 p.m. on 5 June I was in front of the door of my H.Q. in Via Pilotta. A civilian passed me (I think it was a civilian), who said "They have killed a Finance Guard". I called two of my men and said "Let's go and see what has happened." I went to Via Tre Cannelli. Before arriving I saw an assembly of people standing around. I advanced with my men and saw the crowd away, cleared my way through. I saw the accused there. I was coming from Via IV Novembre and accused was standing away from me — the body had fallen on. When I arrived there was confusion. I don't remember exactly how accused was dressed. He had a pistol in his hand. I asked him first "What has happened?" I asked "What has happened, who has killed?" The accused answered "I have killed". I don't know the accused's name — I speak of the accused as I recognised him to-day as the man I spoke to. I also asked the accused "Why?" He replied "Per Legittima Difesa."

DECLASSIFIED
Authority NND 785034
By NARA, Date

I asked him to give me the pistol. He refused, because he said he had acted in self defence. He said he had acted for self defence, because the Lieutenant had drawn his pistol. He told me when the deceased had taken out his pistol, there was another civilian there who would have fired. He told me he told the lieutenant to stop taking down certain notices. The posters which the lieutenant was trying to take down are in glass boxes in Via Tre Cannelli: they are glass cases, but the glass is missing. I don't remember what was on the posters that caused shouting. There was with the accused a girl who, the defendant said, could testify in his favour. I saw the Lieutenant's body on the ground. I don't think I knew him. I noticed how he was dressed. He was not wearing his blouse — it was thrown on his shoulders, as if he had taken it off in haste. I noticed on the left sleeve of his shirt a band with some lettering in indelible ink on it. I did not read what the band said — but I have since seen others like it. I did see part of the band which said "Police". The accused did not say how many times he had fired — I did not ask him. When I arrived there was with the accused, besides the girl, a third man with the Partisan's Executive armband. I asked him what he was doing, and he said "I am waiting for my captain, whom I have sent for". I said "Yes, we will wait", as I did not wish to go ahead with something that had been reported to another officer. As the deceased lay on the ground, his arm band was partly covered. I did not see his sleeves were rolled up. But he had a blouse which he was carrying which covered part of his body. Only a small piece of the arm-band could be seen. The rest was obscured partly by the blouse, and partly by the position of the arm.

DECLASSIFIED
NND 785024
By NARA, Date

xxd

I do not remember if the accused said anything else. I do not believe he said anything else. He had already said "I killed him", and I thought my task was complete, as the Captain had been already informed. Accused did not say he was a "Volontario della Libertà", but I said that he was by his armband. I believe it was a red band, with the letters VL. I was not too interested in these particulars — what interested me was that he should remain there. I did not recognise him as a Volontario della Libertà, so I simply asked him for the documents to prove that he had the right to wear a band. He had no documents, nor did the young girl with him.

No Question.

By the Court

I believe the posters were in Italian, but I am not sure, because I did not observe them. Rome was full of posters and I did not look at them closely.

Fifth Witness (Sworn)

Signora Roncati Anna, Via Tre Cannelli 15. I am a doorkeeper. On afternoon of 5 June I was in my kitchen, when I heard a commotion. I went to the door of my house. I saw 2 young men talking. I could not understand what they said. As I watched I heard a shot, and one of the two fell to the ground. I did not understand, as I was excited, being a woman, and I thought my son might be there. I got excited as soon as I saw the boy fall to the ground. I did not understand, because they were a bit distant, and I could not hear well. I did not recognise who it was. One of the men was military — the other I cannot swear.

DECLASSIFIED
NND 785024
By NARA, Date

The one who was shot was the military man. I didn't see what he did before he was shot. I was inside, I came out only when the thing happened. I was in my kitchen when I heard the shot. I heard only the one shot. Afterwards I saw nothing, because I fell ill, and they carried me to close the front of my house. A young girl called me, but I would not recognise her. I was at the front door when I heard the two men talking. I was still in the same place when I heard the shot. Before that I was in the kitchen. I was in my house when I first heard the commotion. When I was frightened I went up to a friend on the second floor who gave me coffee. The military man who was shot was in grey uniform. I saw afterwards he had a blouse, but he was not wearing it. I did not see whether he had it on at the time of the firing, but it was on the ground afterwards.

xxd

I did not see anything. Only at night I saw the pieces on the side of the body.

No Re-xtn

By the Court

The body remained on the ground till about 6.0 p.m. When I heard the commotion there were only – few people in the street. The commotion I heard was the sound of feet, and I also heard people shouting. I did hear the two men talking, but I did not understand what they said. They were standing still near each other. I didn't see anybody but the two men. They were speaking calmly.

(A thoroughly unreliable witness)

DECLASSIFIED
NND 785024
By NARA, Date

Sixth Witness (Sworn)

Signora Caterina Castellana Verzini, Via Tre Cannelli 15.
I am a property owner. I was at the window of my house on the afternoon of 5 June, about 3.0 p.m., on the third floor. I saw the officer walk across the street. It was the window of the hall, opposite to the door. It looks out on to Via Tre Cannelli. I saw the officer walk from my side to the other side of the street, and I saw him tear from the boxes on the other side three posters, on which were written "Viva l'Unità". All these posters were exactly the same. The officer had a blouse over his arm, his shirt sleeves rolled up, glasses on, and a cap in his hand. He had no other distinguishing features. I did not see any distinguishing marks on his arm. I did see the blouse over his left arm. I am sure there was no mark on the upper sleeve. He succeeded in pulling down the posters. Then as he went down Via Tre Cannelli, a young man appeared coming from Via IV Novembre. The young man was accompanied by a young girl. He approached the officer and pointed a pistol to the upper part of his body near the heart. I believe the young man asked why the officer had taken down the posters, but I did not hear well. They were close to each other almost body to body. Then I saw the officer begin to pull his pistol out, and then I heard a shot. I saw the pistol just as he was taking it out of the case, but he was not in time, as the young man fired. After he was shot, someone, I do not know who, took the pistol away from him. It was a young man wearing a beard, not too long. I saw him from above. He had a beard. On his left sleeve there was an arm-band. I believe accused is the man, but I cannot swear. If he had a beard on I could identify him better.

8.

DECLASSIFIED
NND 785024
By NARA, Date

I don't know if the two men talked to each other – it was just an instant. The young man remained by the Lieutenant after the shooting, revolver in hand, & did not move away. Previously I saw him moving towards the Lieutenant, pistol in hand, and he had only time to say a few words before he fired. He did not move back before he fired. The peasant long enough only to say a word or two before he fired. They were near each other when the ~~young~~ officer got his pistol out. I saw the officer fall, & he fell with his head pointing towards the middle of the road, feet towards the opposite side. Afterwards the young man stayed there with the body, pistol in hand, & talked to one or two people. As soon as I heard the first shot I put my hands to my head, & then back from the window. I believe I heard another, not perhaps 2 other shots. I am certain I heard a second shot. They came one right after the other. I cannot say precisely how long.

Xxd

I saw the Lieutenant take the pistol from his holster. I noticed that the officer was wearing a band on his arm. It was a white band, I believe, with certain signs on it. The Lieutenant had his jacket over his left arm. He had his shirt sleeves rolled up, and the jacket was over the upper part of the arm. I cannot be sure if the Lieutenant was wearing a cap. I did see a cap, either before or afterwards. He did wear glasses. The Lieutenant was alone, and the other man had a girl with him. After the first shot, the people in the street approached the scene. I was about a high above the street as the arches in this Court. I was at the window to see the Americans pass by in the street. There were some vehicles passing along Via Quattro Novembre – which is close to Via Tre Cannelli. I saw an American

DECLASSIFIED
NND 785024
By NARA, Date

time photographs the dead bierement. This was some time later. I had been at the window already about 20 minutes when the shot was fired.

Recd

I have attended here to-day because I was summoned.

By the Court

There were people on the corner of Via IV November. That is within a few feet of my house, and of the place where the shooting took place. People were behaving normally, there was no shouting. Before the shot was fired there had been no disturbance in my street — there was complete calm. The three posters were in three windows, one in each window. They were the only posters in those three windows. There were other posters in the vicinity, but the bierement only took down these three. They were new posters — put up either that morning or the day before. I did see the bierement after the fired on the bodies, after the shot was fired. I can only say I saw him drawing it out — I cannot say what for he got it. I did not see if he was able to point it.

Further said

I cannot say whether the bierement fell with the pistol.

Seventh Witness (Sworn)

Major A. Battisby, Deputy Chief Public Safety Officer, Rome. We have employed many Italian officers to work for us. There was one called Giorgio Bartolini. On the morning of my arrival, this officer met me, by order of Col. Pollock, to conduct me to Col. Pollock. That was at 4.30 a.m. on the 5th. He took me to Col. Pollock, and remained with me till mid-day. In the meantime I had proposed to this officer that he should

DECLASSIFIED
NND 785024
By NARA, Date

remain
[temporarily, my personal assistant. He accepted, and I addressed a letter to his C.O., asking for him to be delegated for this service. He left me at mid-day for his meal, and I never saw him again. It was within my competence to ask for this officer, as I am responsible for the Carabinieri, Guardia di Finanza, Fire Brigade etc. I authorised the second officer to wear the armband, which is the same as that issued to civil police to-day. I never saw him wear it — but he was issued with one & authorised to wear it.

XXd

It was not necessary for me to wait for the reply of the C.O., before employing this officer. I wrote as a matter of courtesy.

No Re-xin

By the Court

The second officer was due to return to duty at 2.30 p.m. He would have been on duty as my personal assistant in the office. Till 2.30 p.m. when he was due back, he had no duties to perform, in respect of my office — but of course a police officer is always on duty.

(Adjourned 1700 hours)

15 July 1944
Court re-assembled at 0920 hours.

151

Eighth Witness (Sworn)

Carlo Coppi, Foro Traiano 1. I am a student. On 5 June about 2.0 p.m. I was at the office of the newspaper L'Unità, together with my newspaper colleagues. About 3.0 p.m. I left, accompanied by Romolo Bertirepa, the accused. I had gone to drink water at a fountain in Via Tre Cannelli.

DECLASSIFIED
NND 785024
By NARA, Date

Accused accompanied me – I don't know if – had any other motives. In Via Tre Canetti I saw a man in uniform, who with his right hand was removing posters of L'Unità from the wall. He had a grey-green shirt with rolled up sleeves, a jacket thrown over his left arm, with no head covering. He had no distinctive sign on his arms. I did not see any. Accused said "Halt" to the man. He stopped. Accused asked the reason for his act. The military man did not answer, but asked who accused was. Accused produced himself as a guard of the newspaper L'Unità – an armed guard. Then accused invited the military man to follow him to the newspaper. It was in the nature of a friendly, not a civil conversation. They did not go to the office. The military man put his hand to his pistol – took it out, placed a round in the chamber, and pointed the weapon at Bartolucci. Bartolucci was armed, but he had no gun in his hand. His right hand was in his right trousers pocket – not the hip pocket. I suppose he had his gun in the right pocket. When Bartolucci took out his pistol, I looked round and noticed about 5 metres behind him an individual in civilian clothes with a pistol in his hand. I saw Bartolucci point the pistol to the left side of the chest of the accused. When I saw the individual behind Bartolucci I threw myself aside and cried "Watch out". I heard shots immediately following my crying out. Accused did not remove himself from Bartolucci – he just bore me step backwards and fired, I believe 3 times. I cannot say if the lieutenant fired. I know there were several shots, but I don't know who fired. The lieutenant fell to the ground. Then he raised his upper half of the body and pointed the gun at accused. Accused was leaning down on him trying to help him. The lieutenant did

DECLASSIFIED
NND 785024
By NARA, Date

not gain the sitting position. He just raised the upper part of his body, raised his hands to his head, and then fell back again. He did not say anything. I thought his gestures were contractions of death. Accused only leaned down towards the Lieutenant. He still had the pistol in his hand — I believe in the same hand. I then went and accused said "Look for help, look for someone". He said nothing else. I moved to go to the newspaper, but on the way I met a civilian with a police band coming towards us. There was not a crowd. This civilian was the first person I saw. I think that those who had been there had left the place. I noticed the Lieutenant the first time when I reached the point where I could see Via Tre Cannelli and Via Condotta, and I then saw him falling down the entrance from the third window. I was in company with accused. When I saw persons being wounded, I don't remember if I said anything to accused. I don't think accused said anything. In any case it was a gesture that we unanimously considered offensive. Accused showed this by saying "Halt" to the Lieutenant. He said it in a loud voice in an intimidating tone. The Lieutenant was already wounded. I noticed when he was removing the pistol he made a gesture — it looked rather in a hurry. I noticed he was surprised by the "Halt". I believe accused's gun was a 9 calibre Beretta. I have transported arms in Rome for some time, and became familiar with arms. This particular weapon was handed to an Australian officer. I believe it was on the 4th the time of the donation that I ascertained the calibre. I think the donation was the day after the shooting. It was the accused who gave it. The Australian officer said the Beretta was a good pistol, after we had the question of calibre came up. The conversation was between accused and the officer, but I was present. Accused said it was a 9 calibre. Before that time I did

DECLASSIFIED
NND 785027
By NARA, Date

not discuss the affair with accused. At that time I did not know what the calibre of the pistol was. I believe the policemen who took my name knew the calibre. It was an Italian civilian wearing a police band. I believe his name was Alessandrini, but I don't remember exactly. (Panetta Giorgio is brought into Court) This is not the man.

XXd

Accused was wearing the armband of Volunteer of Liberty. He showed it to the policeman, just as he had showed it to Barbarisi. Barbarisi did not say anything when he was shown the band. Accused had a document, but not a regular one — he had a false identity document. He had a false document, because he was being looked for by German police, as he had taken part in partisan activities. He told the policeman that the document was false, and that his name was Rosario Bernieri. Policeman did not ask accused for his pistol. He said accused had the right to have it, since he had the band. Accused was commanding the guards at the newspaper office. He was at the disposal of the Committee of National Liberation. I don't know what happened to the civilian that I had seen present. I believe he ran away up the via Tre Cannelli which leads away to the right. I don't know of other incidents that day that I witnessed myself. I knew we feared that the Fascists might perpetrate acts of reprisals, as we knew there were still fascists in Rome. We thought that there were still some Germans in Rome. When I went away for help, the accused remained 2 or 3 meters from the body.

No Redxm

By the Court

Both the accused and the second officer had pistols.

DECLASSIFIED
NND 785024
By NARA, Date

I don't ... if they both fired. The second officer was carrying his pistol in a holster. I saw him take his pistol out of the holster. As I have already said, he took his pistol out, put a shell in the chamber, and pointed the gun at accused. Accused already had his hand in his pocket, possibly it was a matter of habit. I saw accused take out his pistol. The lieutenant took out his pistol first and pointed it at accused, before accused had taken out his pistol. It is not correct that the accused pointed his pistol at the lieutenant first, and that the lieutenant then tried to get his pistol out of the holster. I don't know who the other civilian was who was standing a few metres away. I don't know, but I think he too fired, as I heard shots pass close to me. When accused fired, the lieutenant had his gun in his hand. When the lieutenant fell, his pistol was on the ground on the right of his head. As lieutenant partly raised his body and his arms, the fingers of his hands opened, and the pistol fell to the ground. The hand is in his right hand. I cannot say I saw accused fire – it was my impression that he did. I had already withdrawn to the right. I cannot say I saw him withdraw his pistol from his pocket. I saw him take a step back, but he did not then have the pistol in his hand. Before accused took the step back, the lieutenant had already pointed the pistol at him – at his left side at the height of a horizontally raised arm. I left right that position while accused took a step back. The Australian officer has a different name to remember. I met him in the newspaper, because he presented himself as an Australian communist. The arm-bands, such as worn by accused, were distributed at the office

DECLASSIFIED
NND 785014
By NARA, Date

of the United to all the patriots, but I does know by whom. It was an official and by the National Committee of Liberation, not a band of one particular party. Accused was in command of a guard, composed of patriots who had entered Rome with the Allies. This was a guard for the newspapers. I do not know who ordered the guard. When I left the office with accused I did not know he was armed, but I assumed so. That morning I had gone to the office to get cartridges released from gaol, and I stayed on to keep the guard. When I left the office with the accused I was going for a drink. I have known accused since the end of September. We are quite good friends. I see him often for reasons of work. I learnt the calibre of accused's pistol when it passed from him to the Australian officer. The accused had been in Palestine or Yugoslavia, where he was operating. I was in Rome up to early May, or then I left. I returned again about 3 or 4 days before the Allies entered. I think the accused came to Rome a little time before the Allies came. I only saw the accused's gun afterwards – immediately afterwards. It was a pistol – the same type as the one I saw given to the Australian. From the command "Halt" to the shooting the lapse of time was just sufficient for him to say the words I have described. I cannot say how long exactly, as I was excited at the time. It was a minute perhaps – I cannot say.

(A good witness).

Ninth Witness (Sworn)

Captain Greenhill, Capt. G.S., attached A.M.G. Rome Police. Lt. Col. Pollock delegated to me the investigation of this case, and to ascertain who was responsible for the shooting. I took statements. I took a statement from accused, after cautioning him in accordance with the procedure in

DECLASSIFIED
DND 785084
By DNS NARA, Date

English la. I saw accused at H.Q., Ass.G. Police, in Palazzo Viminale. I told him I was - Captain of Police and that I was investigating death of Commander of Guardia di Finanza, which occurred about 3.0 p.m. on 5 June. He replied - "Yes, I did it". I cautioned him, and he said "I want to tell you all about it". I said to him that I wanted him to understand that he need not say anything further unless he wanted to; that if he did say anything, it would be taken down in writing and might be used in evidence. I did that through an interpreter. I identify and produce statement made by prisoner after caution, taken down - my own hand, attached where signed and signed on each page by accused. Accused signed the alterations and also the corrections in spelling that I had made. I made no promise and no threats to accused before taking the statement. I did not offer any advantage if he made a statement. (Statement accepted and marked Exhibit 1). I produce and identify 3 cartridge cases in an envelope, which were handed to me from a Lieutenant of the Guardia Finanza - I believe his name is Pasqua. They have been kept in my custody since. I actually received the cartridges from an Agente di Pubblica Sicurezza called Paretta. (Envelope containing cartridge marked Exhibit 2). I myself arrived in Rome in the very early morning of 5 June, about 4.30 a.m. I personally posted proclamations in Rome at 6.15 a.m. on morning of 5 June, particularly Proclamations 1 and 2; I posted them in Piazza San Lorenzo in Lucina, just off Corso Umberto. At 11.30 a.m. on 7 June I visited the mortuary at the Policlinico Hospital in Rome. I saw the dead body of the Lieutenant of the Guardia Finanza, dressed in the uniform, which is well known to me.

DECLASSIFIED
NND 785024
By [illegible] NARA, Date [illegible]

At 2.45 p.m. I assisted at the hearing when Dr. Fontana Mario carried out a post-mortem examination. I saw a wound in the front of the chest, and also a wound in the lower part of the back. The doctor examined the whole body, and there was no other injury apart from these two wounds. Later that afternoon I visited via Tre Cannelli.

No xxtion

By the Court

From my previous experience as a London police officer, I thought that the hole had been fired from close, and that the hole at the back was obviously a hole of exit. It was smaller than the hole of entrance. I saw the doctor ascertain that there was a clear hole right through the body. He did this with a probe. There was only the one wound in the body. I examined the deceased's clothes. He had his jacket on, his breeches, jack boots, shirt, collar and tie. I could see no signs of singeing on the jacket, so I unbuttoned the jacket and examined the shirt, which showed a hole in front and another in rear. I did not then know the facts as to the finding of the body, but I came to the conclusion that the deceased was not wearing his jacket. The shirt was slightly frayed and blood-stained round the hole of entrance. The hole at the back was hardly frayed at all.

xxd (with leave)

There were faint traces of tattooing round the hole in the shirt, indicating the shot was fired close to. It may have been dirt.

Tenth Witness (Sworn)

Pancetta Giorgio, Aiuto di Pubblica Sicurezza.

I received orders from Adm. G. in this case to make inquiries, and to collect signed statements. In the

DECLASSIFIED
NND 785074
By NARA, Date

cause upon which I came into possession of 3 shells. I identify Exhibit 2, as shells which I received from an officer of the Carabinieri some 10 days after the shooting. I passed them to Capt. Greenhill. I don't remember the name of the officer of the Carabinieri. From the time I received the shells till I turned them over to Capt. Greenhill was only half an hour.

XXtion

I took statements from all the witnesses, except the Signora Vergilli refused to sign her statement. At 1500 hours precisely on 5 June I went to Via Tre Cannelli. I was going to the office. At the corner of Via Tre Cannelli, standing about 100 yd. away, I saw a body on the ground covered with a sheet. I enquired of the body or rather a military, from the body out from the grey green trousers. I approached, because an officer of the Guardia di Finanza and one of the men of the Guardia di Finanza were standing near the body. I asked the Officer if he needed my help. He said No. I raised the blanket, and saw that the deceased was Lt. Barbarisi, whom I had seen in the office that morning. A little distance from the body was the jacket of Barbarisi folded. Near the windows of the postal boxes I saw the cap of Barbarisi, also folded. I moved away and joined a group of persons who were passer.

[Case for the Prosecution subject to calling Lt. Pacqua to give formal proof of the custody of the shells (Exhibit a).]

146

The Court explained the rights of the accused.

(Adjourned 1245 hours.)

17 July 1944

Court re-assembled at 0910 hours.

DECLASSIFIED
NND 785014
By NARA, Date

Aw. Adolino opens.

The prosecution here wr proved accused's act illegal. But the defence can prove his innocence quite clearly. We shall prove, first, that the incidents took place in an atmosphere of war, and that Bartirogna, under orders of Committee of Liberation, had to be in a state of anxiety & unrest. Secondly we shall prove that accused was a volunteer of Liberty on duty, charged with the task of guarding the seat of L'Unità and adjacent premises against possible attack by Nazis or Fascists. Thirdly we shall prove that accused was authorised to carry arms. Fourthly we shall prove that the patriots were bound by orders received, and at the material time it was not yet known that the Allies were taking over all police duties. Fifthly Bartirogna and the other unidentified man, removing the posters, was doing a thing that appeared to be hostile to the principles of the patriots — and apparently hostile to the Allies themselves. Sixthly the verbal exchange was justified objectively and subjectively. Seventhly Bartirogna reacted in a most hostile manner to accused's words, and was the first to pass from words to arms. Eighthly accused had no other possible escape from danger, which was actual, imminent, except in the way he did act. Ninthly, on a true view of the facts, the act of accused was, from a psychological point of view, no more than a natural act of self-preservation. Tenthly the act is not punishable by Italian law because the act of defence of the accused was proportionate to the degree of offence offered.

Evidence for the Defence

Accused elects to give evidence on his own behalf and is duly sworn.

Rosario Bartirogna — age 22, unmarried, medical student. Since 8th Sept. 1943 I have been engaged in partisan activities, in Rome and the surrounding area. Since 1939 I have engaged in political activities, and in September 1941 I was arrested by the Fascist police on

DECLASSIFIED
NND 785074
By NARA, Date

security work. I was called up, military service in February 1943, and discharged for my studies in May 1943. In November 1943, I became a member of one of the partisan groups (GAP) under auspices of National Committee of Liberation. I was a member of GAP Pinciane. The GAP are very light squads organized by the partisans for action in the city streets. I was the commander of the GAP Pinciane. In January, following the Allied landing, the National Committee ordered me to take charge of the Cursecchie partisans. I returned to Rome in March, when the arrival of the Allies was no longer near, and resumed command of GAP Pinciane. I had to leave Rome to go to a partisan zone in early May. I returned to Rome on 2 June to bring a report to my superiors. My command was the military auxiliary of the Committee of National Liberation, working in concert with Allied military authorities. I was sent to Cassino and Frosinone as GAP commander, and I have carried out activities for obtaining information. On 4 June, as the arrival of the Allies was not considered imminent, my command sent me to a Partisan zone. I left at 7.30 p.m. Towards 11.00 a.m. on Via Tiburtina, I saw Allied formations, accordingly returned, considering that my mission was no longer valid. Returning to Rome, being unable to contact with my Hdq., I made contact with my colleagues of San Lorenzo District. On the night of 4-5 I was ordered to carry out activities for security and order in this District. On morning of 5 June I left my companions of San Lorenzo, and went to search for my commander, that I learned I could find at the seat of my party. I did not notice Allied proclamations during the morning of the 5th June. I went directly from San Lorenzo to the seat of the newspaper

DECLASSIFIED
NND 785024
By NARA, Date

L'Unità, which was also the H.Q. of my group, and remained there for 2 days and nights. I did not move from Via Quattro Novembre and its surroundings, except that I went a few metres to East. I did not see Allied Proclamations posted in that area. On 5 June I was commander of the guard group surrounding the building of L'Unità. One of my superiors gave me that mission. The building is on the corner of Via Quattro Novembre and Via Tre Cannelle, and stretches on to Via Delle Carrozze. There were several posters around the building, hailing the arrival of the Allies, the liberation of Rome, the Allied Forces, the newspaper and the Communist party. Posters were at regular intervals — "Viva L'Italia Libera", "Viva gli Eserciti Alleati," "Viva il Partito Comunista italiano", and "Viva l'Unità". There were no Nazi or Fascist posters on the building. In the afternoon I was dressed as now, with my shirt collar open and over my coat. I was wearing this shirt. I had a very narrow beard on my chin and moustaches which reached from to the beard. I had a red, white and green armband, inscribed VL (= Volontari della Libertà), with serial number and the stamp of the party. It had been given to me in San Lorenzo by my companions, from whom I departed at that moment. The bands were given by the National Committee of Liberation, to members who were well known by the leaders of the Committee. In the afternoon of the 5th I made frequent visits of inspection around the premises, but did not leave the vicinity. At 3.0 p.m. I made a round of inspection. I went out through the main entrance on Via Quattro Novembre and directed myself towards Via Tre Cannelle. Carla Capponi was with me. I did not know at the time why she accompanied me. When I arrived in Via Tre Cannelle I saw beyond the "elbow" of the street

DECLASSIFIED
NND 785094
By NARA, Date

an individual who, in keeping with another, was tearing down posters or the last show window on the building. They are on the part of the wall which faces Via Tè Cannetti (marked by crosses on attached sketch plan). I also mark with a □ the door of the building from which I came out. (Sketch plan attached to Record and marked Exhibit 3). I did not recognize the two individuals. One individual, slightly at the back of the other was removing posters. He seemed to be in uniform, or rather in parts of a uniform. The other was a little in front of the first individual, a metre or so perhaps, and gave me the impression that they were together. I do not think he was removing posters. There was no glass in the show windows. The second man was definitely in civilian clothes. When I saw them, I approached them telling them to stop doing what they were doing. I addressed them both, but only one of them answered directly to my "Halt". It was the military man who answered. He was without a hat, with a coat over his arm, his sleeves rolled up, and I cannot say whether he wore any signs or not. I did not recognize him as an officer, nor as an officer of any particular branch. Many people in Rome had to wear uniform, because they had no civilian clothes. He was wearing black boots, breeches, a grey green shirt, and a coat over his left arm. It was the same uniform as that worn for some time by Italian officers and officers of the militia — officers and non-commissioned officers. His coat was folded and had been tossed over the top part of the arm, and covered the upper part completely. I do not know which side out the coat was folded. The military man was very excited. He seemed surprised

DECLASSIFIED
NND 785074
By NARA, Date

or my "left" as I turned to move to my. He turned and addressed me in a most arrogant manner. He said he could do what he liked – in my place that I should say who I was. I replied rather angrily that I was a volunteer of liberty, and I showed him my badge. Both of us were somewhat excited. As I answered him, the military man put his hand on his pistol in his holster (which was attached to his belt, rather towards the back), drew the pistol out, put a bullet into the chamber by cocking the pistol. He removed the safety catch and pointed the pistol to the left side in the middle of my body. The pistol evidently had a clip in place, but presumably there was no bullet in the chamber. I had my pistol in my right side trousers pocket. I believe it was while he was pulling his pistol I was telling him I was a VL, and that he should follow me to the office of the newspaper. I told him of my duty as commandant of the Jewish group. He rested his pistol at the height of my heart, with a very threatening air. I had my pistol in my trousers pocket, with my hand on it. My pistol had a bullet in the chamber, without safety catch, and the percussion pin loaded. In that position all that was needed was a slight pressure of the muscles between my fingers to put the percussion pin in a firing position. While the military man was drawing his pistol I had already done what I have described, in order to be prepared for the unexpected. All this point several things happened in a very short time – I don't know if successive, or whether they were dependent on my

DECLASSIFIED
NND 785024
By NARA, Date

action. The Lieutenant placed his arm on my heart – I heard a woman scream – I take out my pistol – I hear the echo of some shots – even hope that I struck a blow with my left hand against the Lieutenant's eyes, depending in the struggle – I jump back one step and fire 3 shots. I intended to deflect the Lieutenant's pistol sideways. The pistol stayed in the hand of the Lieutenant till I saw him dying. I don't remember why I fired 3 shots, but I remember that I did. This was ascertained by the expert when he examined my pistol. I cannot be sure that the Lieutenant did not fire – I believe not. I am sure there were other shots besides my three. I heard more than 3 shots – I believe 5. I don't know who fired them, or from where. I got the impression from the whole thing that they were fired by the other man who was with the Lieutenant. My recollection is that Carlo Capuzzi was somewhat around from me, a little behind me, and to my left. When I fired, the Lieutenant fell, but the contortions that have already been described, and then he fell the pistol, which was found to the right of the back of his head. I sent Carlo Capuzzi to go for help, because it did not seem that the Lieutenant was dead, but after a few minutes he died. At the moment of the shots there were very few people in the pass of the street, and most of them ran off. After the fall of the Lieutenant, people began to return and look around. I began, as was my duty, to keep order. I did not arrested the Patriot leader (Cesare Alberto) when he started to give evidence, but I arrested him later when he gave evidence about the conversation. His account of the conversation was accurate but omitted one thing. I told him, as he said, that I had acted in Self-Defence, and I told him that this was not the only reason that I did not hand

DECLASSIFIED
NND 785027
By NARA, Date

him the arms. In p r I told him that I [illegible] to give
account for that arm to my direct superiors at the news-
paper office. It was at that point that the officer who
questioned me told the Commandant that I could keep the
arms, as I was telling the truth. I remember that some
officers of the Allied forces came to the scene, saying that
they had seen — I don't remember exactly. The members
of the Allied Forces came first. I remained on the spot
about 20 minutes or half an hour. The officer asked me
for documents, and I told him that I had only false
documents. I showed them to him, and also gave him
my true particulars. (Brigadiere Colantonio Ovidio
is longer in the Court). I believe I recognise this officer
as one who came up inquisitively afterwards, but he was
dressed in civilian clothes. The Brigadiere came at the
same time as the Americans. I left Rome on 7 June
for reasons of a very delicate. In the Fascist Army
I served only as a medical soldier, therefore knew
nothing about arms. I tried to bring help to Badoglio
if this was possible.

XXd

Antonello Trombadore was the person who gave me the order to
guard this building. He had been my young commander
when I was with the GAP, and later I was sent to command
the Partisans. He was one of the members of the Rome
Military Committee. I think he gave the order as
Commander of the Roman National Guard, of which I was
a member under the National Committee of Liberation.
I am not accustomed to taking orders from persons of lower
official position I am not sure. At that critical time
we all had to keep our personalities disguised. In that
clandestine period, Antonello Trombadore was singer for
the Nazi-Fascist police, air waiter for the first time

DECLASSIFIED
NND 785024
By NARA, Date

that I had a big real name. He had been one of my commanders in the Partisan period. Also at the time he gave the order he was in company with Giacomo Pellegrini, one of the leaders of the Italian Communist party. Before I was put on there had been a panic, which was not too decisive, — people attacked in front of the building and there was confusion, and I was told to take charge. Miss Capini did not come to call me. She had come to L'Unità to pick her colleagues, and amongst them she found me. I had seen her during the morning, at dinner in another place, and several times during the day. I don't know precisely myself what she was doing when she came on with me. It was probably as I was going out of the door that I got into her company, but I cannot remember. No one told me that someone was taking from posting — I saw it with my own eyes. I saw the two as I have described. The military man was the nearer of the two to me. The military man was the nearer of the two to the posting — the other was a little more to the right. I could not see or note how many postings he had taken down — I saw later there were three. The military man wore black boots, but I did not see if he had spurs. He was wearing grey-green breeches. He had a shirt of about the same colour. He did have a belt, but not the ammunition belt that goes over the shoulder — or possibly I did not see it because of his coat. The coat was drawn on the top part of the left arm, and perhaps covered part of the shoulder. I don't know on which 142 shoulder the ammunition belt goes. I did not see any other particulars in that moment, and I don't believe anyone else would. When I called "Halt", the military man turned round, after giving a glance to the other man, and came towards me. He pivoted on his heels & then came towards me. At a certain point we met.

DECLASSIFIED
Authority NND 785024
By NARA, Date

After a little time he said he would do what he liked, & asked who I was. After I spoke to him he withdrew his pistol, put it back in the holster, & pointed the pistol towards my heart. When he did that I believe I said nothing. He said nothing – he had already said something before. When he pointed the gun at my heart I, since things were happening around me which were of importance, put my hand in my pocket resting it on my pistol. With the membrane between the first two fingers I seized the percussion cap, and kept myself ready for the unexpected. I was doing this while he drew his pistol. The lieutenant had his pistol pointed to my body, hence I took aim at completely. I believe I took aim at the moment when he actually rested his pistol against my body. At that moment we did not speak to each other. I cannot say how long elapsed from that till the 2 shots were fired from elsewhere. I did not allow him time to fire because I knocked his hand away – & for this reason I cannot say whether or not the lieutenant was fired the two shots or not. I gave the blow with my left hand. If the lieutenant had seen I was armed, perhaps he would have had time to shoot. He had time to cock his pistol. After he pointed the gun I gave the blow which deflected it. Possibly I was more ready than he, and therefore quicker than he did. In other times it might have been possible to take away, but we were in an excited atmosphere on that day. I imagine 2 men chased me: I saw they were acting together, and I thought my life was in peril. I was told that ~~were~~ still Nazi-Fascist elements in Turin, and that one of my companions had been wounded. I was informed that in Piazza Venezia a negro soldier

DECLASSIFIED
NND 785014
By NARA, Date

had been attacked and wounded in the head, and later in the day I saw him pass our office with a bandaged. My Commander had ordered me to be specially alert against acts of sabotage against the Committee of Liberation and the Allies. All the things I had heard and seen made me more precise and meticulous in doing my duty as a guard. My own person was exposed to danger. All the patriots were as excited as they could be. The things that happened did, however, disturb the general feeling of happiness among the general people of Rome. I have always been anti-Fascist. The Guardia Finanza was not a Fascist organisation, any more than the Carabinieri or the Army. I agree this is strange — but in fact during the last 7 months the Guardia Finanza has done many things to help us — though of course many of the officers were against us. I did not know the officers were against us. I knew there were officers hostile to us in all the organisations. I had no animosity against any one. I fought those who fought me and my principles and my organisation — i.e. against the Nazis & Fascists. When I saw the Lieutenant tearing down posters, it was an indication that I was faced with a Nazi or Fascist. During the last 4 months I have myself torn down many Nazi or Fascist posters. Seeing it made me angry. I did not see the uniform. Seeing military dress meant nothing. Patriots were always cut off from our families and supplies & had to use whatever we could lay hands on. The Lieutenant did not tell me who he was or all. I don't know what I should have done if it had been an old man. I only fired at the Lieutenant because he pointed the weapon at me, & this friend fired, and not because he was tearing down the posters. When the pistol was against

DECLASSIFIED
Authority NND 785074
By NARA, Date

my heart I dropped myself against the . adjutant's drawer. I agree it is possible that the third man fired into the air just to frighten me. In fact both my eyes were frightened, and I fired. To tell the truth I did not aim at all.

(Adjourned 1245 – 1420 hrs.)

As I said before I already had my hand in my pocket when the lieutenant was preparing his pistol, and with the movement between my two fingers I pulled back the percussion cap. Meanwhile the lieutenant drew his pistol and cocked it. The actions of the lieutenant and myself were simultaneous and I cannot give the exact sequence of time of these acts which succeeded each other with such amazing speed. I extracted the pistol, gave a blow to the lieutenant's arm, took a step backwards, and immediately afterwards fired. I cannot say exactly when it was the lieutenant pointed his pistol at me. I have no picture of sequence. All I can say is that he did it. Perhaps the blow of my hand was more rapid than his pulling the trigger. I cannot say whether my blow was heavy or light, it was sufficient to deflect the pistol. My jump back was a hurried step back, and I should say I fired before my backward movement stopped. I only tried to deflect the arm – I did not try to take his pistol. I agree that a certain point both our pistols were out. The lieutenant's pistol had hardly been pointed towards my chest when I gave the blow. The lieutenant said nothing. I heard 5 shots altogether – I cannot give the sequence of the shots. I did not say I heard 3 shots followed by 2. (Other witness said was "tré pis tre"). At that moment I does know that I should have retired to place if the lieutenant had fired. I fired 3 shots, and I heard them clearly. I cannot say if the other 2 sounded higher or lower – I was too excited at the time. I have never said the lieutenant fired the two shots. I said that I believe he did not fire. Even if he had fired I should not have been able to notice the fact, I was so excited.

DECLASSIFIED
NND 785014
By NARA, Date

I did not see the lieutenant because he had fired, but because his thrust was the same immediately as if the 2 shots were fired by someone else. The enemy further away has less possibility of doing injury than the nearer one. The lieutenant's coat covered his left arm from elbow to shoulder. Even when the lieutenant unfastening his pistol replacing the holster in the chamber, the coat remained in the same place. He was trouting persons to keep the coat in the same place, and still had the arm in the same position when he fell. I have myself, when figuring the Germans, fired a right while holding 2 or 3 other captured men in the other hand.

(Witness gives a demonstration in Court with a borrowed Czechoslovak coat and pistol).

If you could see my upper arm then, it was because you had special reason for looking. I had no special reason for looking at the lieutenant's arm. I do not remember on which side the lieutenant carried his holster. I had the impression it was on the right and to the back. If I did not see the hand, I may suppose it was not there. I guarantee that I did not see it. If my statement say that I take a few paces back, it may be due to a mistake on the part of the interpreter.

No Reaction

By the Court

My job was to supervise the discipline of the guard on the building. Generally the duties of the guard were to keep order, to disband crowds, remove loiterers, and to keep the street clear. We feared armed attack on the part of armed Nazi & Fascist elements. It was temptation to the Sudeten elements might show themselves openly. We stayed up all night that night, awake, because we had received news of an attack on Torpignattara. There was never an attack against our building. I did not regard the lieutenant's presence as an indication of an attack - merely as a demonstration. When I made my tour of

DECLASSIFIED
NND 785024
By NARA, Date

inspection I was not looking for anything in civil. I had been on the move all day. It was not strictly a tour of inspection. I was simply going from one place to another. I had no particular destination. My weapon had been given to me by a companion. I had received no specific instructions as to opening fire. I was just invited Barbisio to accompany me to the newspaper office. I think the time was about 3.0, perhaps 2.45. I don't think it can have been before 2.30. I thought the contract I had did give me special authority. I mean authority to maintain public order. The band was in the nature of a uniform. My orders were to maintain public order, if order were disturbed by any cause whatsoever. I thought I had authority to fire in case of necessity. In case of disturbance my duty was to quell it peacefully — if it was an armed attack we would have responded with arms. Five or six, or perhaps ten, minutes after the shooting I moved away a short distance to carry out my duty to preserve order. Up to that time the Lieutenant's pistol had been lying in the same place. I do not know whether the witness Alberto Castelli arrived before or after I moved away. During the time I moved away from the body the Lieutenant's pistol disappeared. I immediately looked for it. At that moment an agent of P.S. had arrived and I handed over to him. He is not in Court. I should know him again. I asked those present where the pistol had gone — or rather we asked, but with no success. I agree it was a serious matter — but I was alone, and I was surrounded by a fairly large crowd. I believe I have been asked about this pistol before. The leaning down of the postino was not a cause of my firing. It is true it is an indirect cause, and I should not have interfered if the Lieutenant had not touched the postino. I got the impression that the Lieutenant was unhappy at the

DECLASSIFIED
NND 785074
By NARA, Date

hand right ..., and then he was a big in a hostile way because of it. At that moment, was unable to control my emotions, and I don't know what effect it would have had on me if I had seen that the Lieutenant had an armband. If I had seen an armband I might have asked him more calmly why he was removing posters. I don't think people employed by the Allied Forces would be likely to tear down our Communist Party notices. If I had known the Lieutenant was employed by the Allied Forces I should have addressed him in a calmer way. Actually I did address myself to him in a hostile way. I did not think of the effect of doing so at the time, because I was very irritated. I would agree that the way things happened we both lost our tempers. I do not agree with the evidence given by Signora Vergini. I do not know her, and she has no reason to concoct a lie against me. I think her observation was bad. I did tell the police that I had knocked away the Lieutenant's pistol with my left hand. I cannot explain why it is not in the written statement, as I regard it as most important. My pistol is a gift from a companion, and I gave it to an Australian. Arms were not issued by our superiors, we had to get them for ourselves. I had the right to carry firearms — we were fighting and risking our lives. My band was sufficient authority to carry arms, at least according to the Allied Radio. I speak of bands issued by the Committee of National Liberation. I did not think the band gave me the right to defy the law. I was defending the law. It was after I entered Via Tre Cannelle that I first saw the Lieutenant. He was about 10 metres away — I cannot say exactly. I in fact started work for the Partisans without any training in

DECLASSIFIED
NND 785074
By NARA, Date

arms. I fired a few shots in combat. Since then I have had a lot of experience in the use of arms.

Second witness (Sworn)

Colonello Ovidio, Centro Raccolta dei CC.RR. I am a Brigadiere of CC.RR. Before 8th September last I was in the Internal Corps of the CC.RR in Rome. Since 8 Sept. I have not been on duty in Rome with the Fascist Police. I was part of the Petacci Mussolini's band. The band operated in Rome and outside. On 5 June about 3.0 o'clock I was in an American jeep, with an American captain, a sergeant and a driver — also an American prisoner who had been my guest for some time. At 3.0 o'clock we were on the corner of Via IV Novembre & Via Tre Cannelli. The American prisoner left a statement with me.

(Statement produced and read by the Court. It contains nothing but an unsolicited testimonial to the character of this witness, and after perusal is handed back to the witness).

We were visiting various allied offices trying to find a uniform for my prisoner. We were in Via Quattro Novembre ready to turn into Via Tre Cannelli — we were stopped by traffic coming to meet the turn. I was sitting beside the driver looking into Via Tre Cannelli. I saw a man in uniform with sleeves rolled up, jacket folded over his arm, tearing down posters. The posters said Viva L'Unità, Viva l'Esercito Alleato, etc. I did not notice any particular signs on the sleeve. Later I recognised him as an officer. I did not notice if there was a band on the jacket. Our disciplinary regulations absolutely prohibit appearing without a coat, whether on duty or not. This is of general application to the police forces. Italian discipline prohibits it. The band is supposed to be worn on the left arm on the

DECLASSIFIED
NND 785014
By NARA, Date

blouse, and a shirt. After the officer had taken from 3 paces he continued to walk along via Tre Cannelli towards the Stairs. He had not yet reached the Stairs. On the corner of Via Quattro Fontane a young man and a young woman appeared, going in the same direction. I recognised them both here in Court (witness points to accused and to Lieut. Appuni), but the young man then had a light beard. Accused said something aloud — but I could not hear what because of the noise of traffic — and the officer then made half a turn. There was a brief exchange of angry words, which I could not understand, but could see. The officer then took out a pistol from the holster. I saw him load the pistol, cock it and point it against the accused.

(Court adjourned at 1700 hours).

18 July 1944.

Court re-assembled at 0915 hours.

I saw accused put his hand in his right hand pocket, take out his pistol [with a brusque gesture], shielded himself with his left hand, drew back a step, and I heard some shots. By a "brusque gesture" I mean a rapid gesture. I followed Bentivegna — he was approaching the officer. He did not have a weapon in his hand — he was arm in arm with the young woman. I can definitely exclude that he had a weapon in his hand. The young woman was on the left, the accused was on the right. By "shielded himself with his left hand" I mean he tried to deflect the weapon. I don't believe accused stepped back more than one pace, because they were very near each other. I heard 3 or 4 shots — there was an echo, and I can say positively how many I heard altogether. When the shooting took place the military man fell backwards. Then he made a gesture as if to rise, and made gestures with his hands. He made contractions with his hands, still trying to rise; then he fell back again, and the pistol fell from his hand, and remained on the ground level with his right shoulder.

DECLASSIFIED
Authority NND 785027
By NARA, Date

I did not notice that the officer was an . . . of the Fire and Guard. I saw the officer tear down 3 posters. I only saw one particularly, which said L apostrophe something – I assumed it was L'Unità. When I saw the posters being torn down I saw 2 or 3 other persons near the officer, walking by. I saw someone near him, behind of him. I did not notice who was the closest person to the officer. Accused and the officer were the persons closest to me. I could not precisely say how many shots were fired. I do know who fired the shots, or if the same person fired them all. I was dressed in riding breeches and a light coloured jacket – civilian clothes. I had a tricolour band with the word "Police", and a rectangular piece of cloth, with a star, meaning Sector Commander and Squad Leader, on my left breast. I was with 3 Americans. I walked towards the wounded man to see if I could help. When I arrived near him he died. Accused approached me and said "I have not killed him to commit a murder; I did it in self-defence." He also said "Tenente, Lieutenant, I put myself at your disposal, in order that lists may be sent on all the pretors". I imagine he called me Lieutenant because he saw the star and the band. The Americans with me said that having seen what happened they would have taken care of it all. When the Americans left the scene, they left accused on the spot. They did not speak to accused at all. The Americans spoke amongst themselves in English. I did not see that the officer was acting under the authority of the Allies. On the 5 June I myself surprised some false partisans with bands on their arms who were pillaging a villa. I arrested a member of the German S.S. who wore a band and had regular documents. That was about 9.0 a.m. on the 5th.

DECLASSIFIED
NND 785024
By NARA, Date

About 13 : 00 I was present at the pillaging of the villa. I am here because on Saturday morning I saw a newspaper article about this case. I read that the witness Castellani had been unable to relate the facts as they took place and had contradicted himself. That was in the "Ricostruzione". I reported the facts to my superior officer, maresciallo maggiore, De Angelis, and I was invited by him to come here to testify. I went to the maresciallo commanding the Station of the Palace of Justice. He accompanied me to the Prosecuting Office — this was about 12.0 noon on Saturday. I found there 2 civilians, one at the table and one at the typewriter. I did see armed patriots in Rome on the 5th.

xxd

I have been 12 years in the CC.RR. I first met accused on 5 June, after the incident. I had never seen him before. I had not known of him before. I do not know what party accused belongs to. Torture with our a House is not permitted. Badges of course, by the rules, must be worn on the House. I don't know the name of the American captain and the American sergeant-major. They were just visiting — following the 5th Army. The prisoner said he was leaving for Foggia. I told the story to my Superior last Saturday. Previously I told it only to my family. It did not occur to me to get the names of the American Captain and Sergeant. I was convinced that the Americans would have taken care of it all. I don't know the nationality of the accused. I spoke to him in Italian. The deceased was an Italian. On 5 June I had not yet resumed duty with the CC.RR. I am now with the Centro Raccolta. That is a temporary post for disbanded CC.RR. He shall be despatched from there and given the necessary documents. I don't really know my status at present.

DECLASSIFIED
Authority NND 785024
By NARA, Date

We were going out in the jeep to the different Allied commands in order to find a witness for the prisoner. I left the Americans right after the incident, about 1530 hrs. I went to the Bread H.Q. We were going from Via Cesare Battisti towards Via Nazionale. We were in front of the L'Unità Building. To turn into Via Tre Cannelli the jeep had to turn left. We had to stop to let other traffic go past. I saw the Lieutenant lying down 3 paces. He was dead when I arrived on the spot. I got out into the street, walked to the Lieutenant, & found he was dead. When I saw him lying down the Sergeant & I were in the jeep, stopped ~~in~~ via Cavallotti ~~Via~~ November ~~Cavallotti~~ We were still there when the shots were fired. We had to wait for many cars. They were military vehicles. In spite of the traffic I could see all I have stated. I do not know who fired the shots. I left word on Saturday that I wanted to see the Prosecutor. I did not say when I was coming back. Immediately afterwards I saw an employee of the lawyer, and said I could give evidence, & left my name and address. Immediately afterwards I was told by Avv. Nicolai to be here on Monday. I do say that the witness Castellani gave wrong evidence — all I say is that what I read in the newspaper was wrong, and she contradicted herself. The American Captain took down the name of the street. I did not tell the accused who I was.

NO Reaction

By the Court

There were 5 of us in the Jeep. I was at the back of the Jeep on the left. In front alongside the driver was the Sergeant-Major. The Captain and the prisoner were in the back. The Captain was on the right, and

DECLASSIFIED
Authority NND 785074
By NARA, Date

the prison. ~~[illegible]~~ on the left side behind me. I was sitting with my feet hanging outside the vehicle. The Captain was a Captain of the Military Police, and the Sgt. Major was also Military Police. I only know that they belonged to the 5th Army. They were wearing berets, and the prisoner told me he was a Captain, because I could not distinguish ranks. Only the Sergeant Major was wearing a beret – the Captain had a field jacket. They came to find me in the Via dei Gracchi, where the prisoner knew that I lived. I was in the office of the board, and they asked me to get in and accompany them, to act as a guide to show them where the different stations were. When the traffic cleared, the car turned left into Via Tre Cannelle. In Via Tre Cannelle it stopped, and we got off. I got off first. In the car remained only the driver. I went immediately over to the wounded man, and then I spoke to accused. The Americans remained at the back of me. They were there in the street for everyone to see. I could do nothing because the board had been dissolved and I could not be seen. I don't know what the Americans were thinking. Immediately afterwards we went to the Bar at the corner of Via Tre Cannelle. As soon as accused said he was staying and wanted to give us explanations, we walk away to the Bar and left accused there. It seemed to me that the Americans did not attach too much importance to the incident – they invited me to the Bar. I agree that I thought their action in doing so was most extraordinary. I also declared that the body had to be removed to hospital. The Captain and the prisoner said they would take care of that. I don't know what steps they took. After we came out of the Bar, accused was still there – and then a civilian came who began to murmur prayers over the body. He said an Italian police captain would have come.

DECLASSIFIED
Authority NND 785021
By NARA, Date

I did not attach any more importance to the matter, because I knew the Americans would take care of it. That is why I did not speak till Saturday. Until Saturday I never saw anything about this case in the newspapers. We had nothing else to do on that day except look for a uniform for the prisoner. When we came out of the Bar, we went to the place where the incident took place. We stayed a few minutes. Benvenuto was still there. Since I had to go to the office of the Band, for the handing in of arms, I asked to be excused & went away, leaving the others on the scene. I first met the Americans about 1430 hours. As long as I was with them they did not find a uniform, because the stations we went to had none. The first place was Pincio, Villa Borghesi, and we found ~~none~~ none there. Then we went to the Station ~~of~~ of Genova Cavalleria, near the Railway Station in Via Castel Petrio. At these places we found military personnel but no uniforms. I don't know the units who were at those two places. At the second place we found some American soldiers, but they told us H.Q. had not arrived yet. We also went to Piazza Venezia, but we surmised no H.Q. We were told there was a H.Q. there, but before going to it the Captain wanted to go to this Bar. So we turned the jeep and went back to the Bar. At the time of the incident we were going to the Bar. I saw the lieutenant point his pistol at accused. I saw him fall to the ground. When I arrived there was only accused and the lieutenant. I saw the lieutenant's pistol in his hand and on the ground. I did not touch the pistol. It was still there when I left. It was still there on the ground after we came from the Bar.

DECLASSIFIED
NND 785014
By NARA, Date

he were very in the Bar for a while. I believe the friend was a Beretta, but I did not examine it. I was wearing a star and an armband. They were the usual signs that we had received from the Board. The Allied Command had already advised the Board to be disbanded. I did not think I was on duty. I don't know whether organisation accused belonged. He was wearing an armband – also a tricolour, but I did not notice the writing on it. The fact that we both were armbands showed that we had been active patriots. I did not think accused was in danger of being tried as an assassin. That is my personal opinion, as I saw that he only defended himself. Accused told me his name. I did not know if it was true or false. He did not show me any identity card. The young lady confirmed that he was Beretta. I made no inquiries. I have not seen the American Captain or Sgt. Major since. I saw my friend the prisoner about 2200 hrs. that same evening. He stayed that night at my house, next morning he left. I have not heard from him since. I did not make any written notes. I made no notes of the names or addresses of the officers.

Further Xxd (with leave)

I did not discuss this case with my prisoner friend that night. I did not return to the scene of the crime. I did not take any further interest in the case, because the American Captain said he would take charge of it. I had no contacts with my superiors for some days.

135

Further Redxd (with leave)

The name of the American Prisoner is John B. Sergeant (it is a Greek name) and according to the letter in my possession his serial no. is 19072607.

(Adjourned 1215-1330).

DECLASSIFIED
NND 785024
By NARA, Date

Third Witness (sworn)

Mario Cevolotto, Avvocato, Via Valadier 35, Roma. I am not a communist. I belong to the Democratic Party of Labour. I am the General Political Secretary of the Party. The political direction of the party depends on its organisation and tradition. The tactical direction depends on me. During the 9 months of Nazi domination the Federal Secretary, Bardi, came to meet me, but I was able to hide and carry on my activities under cover. They arrested my wife and kept her for 3 days. I was a member of the National Committee of Liberation, being second member in my Committee, under Marescia Laini who was first member, and being also a member of the military Detachment. This constituted the Command of the different bands, and was composed of a member of each of the 6 parties, for the deliberation of military problems. The Military Detachment had contacts with Marshal Kesselring's H.Q. It was commanded by Col. Montezemolo, after he was arrested and shot, by General Odone.

We had our contacts with General Odone, until he was arrested by the Nazis some 7 or 8 days before the Allies entered. General Odone was in direct contact with the Marshal Kesselring, I suppose through radio. On the 5th June the patriots were armed with all the arms they could be found during the period of clandestine activities. I have known of many cases of patriots tearing down posters of any of the parties. I have known accused for many years — his father practised before his progress for promotion in my office. The family have always come to me for advice since. (Avvocato was duly warned of the consequences of putting the character of the accused in issue). The relations of the accused have always told that accused is intelligent, quick and vivacious, at the same time good and submissive. I, in my relations with him, have judged him to be a very vivacious young man, but fundamentally a submissive

DECLASSIFIED
NND 785024
By NARA, Date

and moment

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I don't ever remember seeing accused angry or irritated. I had never any cause to see him annoyed or disquieted. I don't know how he would react when angry – owing to difference in age, our relations were rather those of superior and inferior.

Fourth witness (Sworn)

Celeste Carlo Negarville, Piazza di Spagna 51, journalist. I belong to the Communist party. On 5 June I was a member of the Board of the Party and Director of "L'Unità". I knew the accused. At 3.0 p.m. on June 5 I believe I was at the typographical department of "Il Messaggero". I returned to L'Unità office about 3.30 p.m. I entered in Via Tre Canali the body of Bartolini still covered with sheet. I questioned the men on guard and learnt what happened. I met the accused. He told me that half an hour before he saw a man – (stopped by the Court, on the ground that we cannot give effect to hearsay evidence where the best evidence is available). Accused was a member of the GAP. He did not depend on me – he depended on my companions who dealt with military matters, particularly Antonelli Trombadori and Giacomo Pellegrini. On 5 June accused received his instructions from the Military Detachment of the National Committee of Liberation, of which I was a member. The instructions were to keep order, in case of abandonment of the city by the Germans, armed attack on Germans & Fascists in case of resistance. If the Germans had not left, it would have been the duty of the accused to fight them. These dispositions were in accordance with orders of General Oxilone, who was believed to be in contact with the

DECLASSIFIED
Authority NND 785027
By NARA, Date

Allies – at least agreements were made upon the meeting of General Oldhame, but they were valid after his meeting.
(Objection on part of the prosecution on the ground, that Defence is not producing the "Best Evidence").
I can produce a statement of the President of the Council, Bonomi. I don't know of anything in writing as to the relations between the Committee and the Allies. You can ask Gen. Oldhame about this.
(Advocate for the Defence indicates that Gen. Oldhame will be called). A few days before Gen. Oldhame's meeting we were all informed of certain conventional words, which were broadcast over the Radio from Bari and London. On 5 June I know accused was wearing the arm band of the Volunteers of Liberty, with the letters CLN, and with the stamp of the party.
The bands were distributed under the care of the Military Detachment. Those depending on Military Detachment directly wore a tricolour band, those depending on the parties wore a white band. These were these two bands which were known to the military command, but there were also various other types of band not so closely controlled. Up to the 6th the patriots were armed, up to which date they were on duty. Bentivegna is a sentimental young man, and I believe that for his military efforts he had to overcome his own inclinations, but he has succeeded in doing so. This activity was not in accordance with his character. I don't say he is impulsive and sentimental. I know he valued human life, and that life should not be taken except in a superior cause.

DECLASSIFIED
NND 785024
By NARA, Date

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I have been Director of l'Unità since the clandestine period, which began after 8 September. I admit that on the morning of 6 June we published news to the effect that Barbarisi had been identified and executed by members of the party – this was what we got from our reporters. It was afterwards found to be inaccurate and a correction was published 2 or 3 days later. We published the correction because we had learned the truth. Our earlier error was based on hearsay of the streets. We believed the original story because there were armed attacks by Fascist bands during the night of 4-5 June, and there were known to be Fascist cars on the 5th. We might quite possibly have thought anybody leaving from our posters was a Fascist. There were no instructions to give a people engaged in tearing down posters. I don't remember receiving any communication from Lt. Barbarisi's H.Q. with reference to the article on 6 June. Possibly such letters would not come to me personally. Since then we have changed our location 3 times. [Copy of the newspaper l'Unità for 9 June shown to witness] Seeing this, I remember now that we did receive a communication from the H.Q. of the Finance Guard. I did not receive it personally. I saw the draft of the original article the night before. I have the last word as to whether an article should be published. It was based on rumours collected in the streets. I did not specify where the reporters were to get the information from. "Giustizia è fatta" in the article means that "justice has been done".

Rexd

I don't know who was the reporter who compiled the report. It was evidently a reporter's account, and did not go through the Editor's office. I can explain the error of the compositor there was in the office on 5 June.

45.

DECLASSIFIED NND 785024 By NARA, Date

he was just coming out of the clandestine at the period. It is obvious that our journalistic course was not proper.

By the Court

[This is not noted – as the questions were directed solely to the conduct of the newspaper in publishing without verification such a misleading article].

Fifth Witness (Sworn)

~~[illegible]~~ Signora ~~[illegible]~~ Bastianina Martini Massa, Via Orazio 31, Rome – housewife. About 3.0 p.m. on 5 June I was coming from towards La Sedinata della Confinata, accompanied by my husband, on our way to an office nearby, to collect a case that he had forgotten that morning. I noticed a person going in the direction of Via Tre Cannelli, and as he went along the side he was tearing strips of paper from the wall. At a certain point a person interrupted and made a sign calling him – but I did not hear the words. Then the first person turned, and they started conversing in a way that seemed angry. I did not exactly know the first person was dressed. He had military boots, trousers, shirt, carrying something on his arm, and he was bare-headed. He was not dressed as a civilian – but he was not dressed completely in military clothes. The strips of paper were in a kind of window – in the street on the wall of a house, at the normal height of a person. The other man was in civilian clothes, with long trousers. I had never seen either of them before. I could not distinguish them very well at the distance I was. I was distant a little more than the length of this hall. I was at the time going down the steps. There was another person standing by the man stripping the posters, and there was a woman near the second person. The second man approached

DECLASSIFIED
NND 785014
By NARA, Date

and stopped to watch taking the photos I saw. The latter turned and they exchanged words of hostility. I could not hear what they said, but they behaved like two angry roosters. I saw in the hand of the second man an arm pointed — then I became frightened and precipitately climbed the stairs. As I was gaining the first steps I heard shots. In a hurry I continued home. It was the men in the military or semi-military clothes that I saw with the pistol. He made some very rapid motions and extended his arm against the other. Going then I turned round and climbed the stairs. My husband accompanied me. I cannot say exactly how many shots I heard — it was more than one, and more than 4 or 5. I thought the man who had his arm extended had fired, and then the other had responded. The first shots were clearer and more staccato, the others were a deeper bark. After that I stayed at home, as I had had enough of that day.

xxd

The distance I was away was not much more than the length of this hall. The military man was standing with his back to the centre of the street. He pointed his pistol at the other man about twenty height, but I could not see on which side. The first shots were clearer than the later ones. The distance from the bottom of the steps to the corner of Via IV Novembre is about the length of this hall, or a little less. I was about half way down the steps when I saw all this. It was the first person, the military man, who pointed the gun. He was holding something in his arm, perhaps the pistol — I did not see exactly. It was in the left arm. He had his sleeves rolled up, and I saw nothing else on his arm. It was when he was turning the photos that I noticed the coat on his arm. I cannot say that I saw the coat afterwards. The civilian was dressed in grey, and he had a tricolour

DECLASSIFIED NND 785014 By NARA, Date

band round the sleeve, they were in those days. I did not notice anything else special. I could not say how the third man was dressed — I could not say whether he was military or civilian. The military men had a belt on, but I could not say if there was a holster on the belt. I remember the armband of the civilian, which was red, white and green. It caught the eye. I did not see any beard. I did not notice the third man's clothes, because he was not doing anything. They did not give me the impression of being together — the military men and the third person — I thought they just happened to be near each other. I did not report what I saw to the police. I am here because the matter happened to come to our house in connection with another matter, and then transpired that I could testify in this case. That was 10-15 days ago. After the scene I ran up the steps very quickly and I did not look round again.

No Re-Exam

By the Court

I think I recognised the accused, but I think perhaps he was not then so well shaved as he is now. I think I recognised Carlo Capponi as the girl I saw, but I am not absolutely sure. I recognise the accused as the man who was with the girl. I don't recognise anybody else before — my attention was not concentrated on the others, but only on these. I am sure I did not see that the second man (the accused) had a weapon. I assume he did, because he had the armband — but I turned round too quickly to see his reaction, when I first saw the military man he was coming towards us, and turned when he was called. Then the two men had

DECLASSIFIED NND 785024 By NARA, Date

this angry self. I cannot say I saw the military man produce the arm. As he had his back towards us I could not exactly see where he was pointing. He was not wholly back towards us and we could see the extended arm. I could see the whole of the civilian's body, but only a third of the military man's body — by that I mean he was partially turned round. The third person was some two steps from the military man, slightly to the back of him. I could not see the front of this body, only the shoulders. I did not notice if he was armed.

(Adjourned 1730 hours)

19 July 1944
Court re-assembled at 0915 hours.

Sixth Witness (Sworn)

General Odone Angelo, Via Montevideo 22, Rome. I am a regular officer of the Italian Army. My rank is Generale di Brigata. I had contacts with the military detachments of the parties. The parties had representative members in the military detachment, for the purpose of establishing the behaviour to be maintained in the military force, both during the Nazi occupation and during the time after the Nazis left. At the time when General Anfuso was Supreme Commander of the Italian Army (in agreement with the Allies) I was second in command, and then when General Berardi succeeded him I was his Chief of Staff. Anfuso was in command from January to March, and Berardi after that till 29 May. On that date I was arrested by the Germans and brought to Via Tasso. Precise agreements were made as to what was to be done with these military bodies in the common interest. The agreements were between me representing the military force and the representatives of the parties in the military detachments. The agreements covered the policy in the event of the Germans evacuating Rome without a struggle, in which case the agreements provided for the employment of our strength against the Germans. In this case this did

DECLASSIFIED
NND 785071
By NARA, Date

not come clear, the agreements provided for the maintenance of public order during the period of change from one occupation to another. When I say Germans, I include also the Republican-Fascist armed forces with aggressive purposes against us. By preserving public order I mean securing maintenance of normal life against any disturbance. During the period of ~~[illegible]~~ entry by the Allies I was under arrest, and had no contacts with the military front. I can give you a general idea of the orders in the event of a German evacuation. There was nothing in writing, for reasons of security — only small notes were exchanged between me and the various parties. Of my own knowledge I don't know what happened to the military detachments after my arrest. I was arrested on 29 May. I was released, or rather came out, or down on 5 June — simply because the guards had abandoned their posts. Our relations with the parties were excellent. The military clandestine front acted on the orders of the Italian Command. I have reason to believe that the Italian Command informed the Allied Command of what was going on and what was being prepared in Rome. I have reason to believe that the nomination of Generals Ambrosio and Bencivenga was made with the agreement of the Allies. I don't of my own knowledge know of the existence of special passwords. I did not have charge of radio communications — so I don't know if passwords were given by Radio Angio or Radio London. In normal times I have never seen a Fascist Grand Council meeting with no power — but it might happen in abnormal times as these were. I don't know the police rules well.

XXd

The military detachment was formed with the object of fighting the Nazis and Fascists, not for the purpose of fighting other enemies of the parties unless they were Nazis or Fascists. It was formed for military purposes, not for public order, and not for carrying out petty

DECLASSIFIED
NND 785021
By NARA, Date

ventotto. The military detachment or had any one permanent headquarters — it held its meetings anywhere. I don't know where H.Q. was on 5 June. If I saw a man dressed in officer's clothes, but carrying his pistol, and in his shirt sleeves, with his Sam Browne belt on his shirt, I should regard him as an officer.

Recd

The fact that I am myself an officer helps me to recognise another officer in such case. But I believe that the public can recognise an officer by his boots, belt and shirt. An officer without a blouse or cap might be taken for an N.C.O. Before 5 June an officer of the Finance Guard could be distinguished from an officer of the militia, because the latter wore a black shirt. But an officer without a blouse could be mistaken for an officer in the Republican Fascist army.

Seventh Witness (Sworn)

De Tuddo Italo, Via Flaminia 19, Rome. I am a journalist. On 5 June about 1500 hours I was coming from Piazza Sant' Apostoli on Via Quattro Novembre. Because of the heat I was walking and pushing my bicycle. Reaching corner of a shoe shop (called Bufferini) I heard some shots. From the direction of the shots I saw two persons facing each other. I was surprised myself to see a military man with no a blouse and with sleeves rolled up. My attention was attracted by this. The other person was a civilian. I cannot precisely say how he was dressed. I vaguely remember that he was dressed in something grey. I did not notice whether he had any distinctive marks — many people were wearing berets that day. I did not know the civilian. He had his back to me. I did not know the military man. It was a very brief scene. I saw the two men quarrelling. I saw the military man produce a pistol,

DECLASSIFIED
NND 765027
By NARA, Date

put a bullet in the chamber and fired it. It was pointing more or less in my direction, I thought it was time to get out of the way. I turned my bicycle and went back the way I had come. I could not see what type of weapon it was. I did not see if the civilian was armed or not. It seemed to me that he had his hands motionless, perhaps at his sides – at any rate he was not waving them. I was in a hurry to get out of the way. I jumped on my bicycle and rode off. As I rode down the hill I heard shots – I cannot say exactly how many, but they were numerous, perhaps 5 or 6. I cannot say if they all came from the same weapon. There were a few people in the street. I believe there was a woman there, but I cannot specify who was there. I could not now recognise the man or the woman.

XXd

The military man was with me, a friend. There was something strange to me – because in the Italian army we are very formal. I did not see the civilian do anything while the military man loaded his pistol, but I do not exclude the possibility that he did. A few days ago I started working for "Il Tempo". Previously to 5 June I had been unemployed for 9 months. I do not belong to any political party.

No Rexton

By the Court

I was pushing my bicycle in the street, on the left side, in order to have the traffic facing me. There was normal traffic. I don't remember the traffic particularly – it was normal. I don't remember any stationary vehicle. I don't remember if there was a stationary jeep at the corner – it would have been no novelty. There was nothing on the first corner where I was. If there was a vehicle waiting to turn left into Via Tre Cannelli it would not have interested me because I was stopped.

DECLASSIFIED
NND 785014
By NARA, Date

from certain windows on the north. I saw a young man come up and I had the impression that he addressed the one in grey-green. I thought the man in grey-green was a military man, but he had no uniform. I did not know him — but I know now his name was Barbarisi. The other young man I recognise as the accused, although at the time he seemed darker and more sun-burned. Barbarisi was in shirt sleeves. I did not notice if he wore any distinguishing marks. Near Barbarisi I believe there was a civilian. Accused was followed by a Sejanina. I saw accused and Barbarisi talking animatedly. At a certain moment Barbarisi took out a pistol and pointed it at accused. I don't know if accused was armed, because at that moment my wife, who was very frightened, invited me to turn back — she had already begun to go up. I did not notice what accused was doing with his hands. As soon as I turned towards the stairs I heard shooting. I heard some 5 or 6 shots. I did feel that the shots had a different tone. My wife and I went up again & returned home.

xxd

I could not tell where the two men were staying. I saw the military man point his pistol at the accused. I then turned round and descended the steps. During the conversation the accused was gesticulating with his hands. I believe the accused was dressed in dark clothes, and I think his shirt collar was open. The young woman was in a light dress. I cannot say exactly how the other civilian was dressed. There appeared to be two groups of shots. I believe the first was the louder group. I did not report what I saw to anyone. I just hinted the story to the Avvocato when I met him. I never reported to the police. I met the Avvocato about 15 days ago to discuss certain questions about my law.

DECLASSIFIED
Authority NND 785024
By NARA, Date

Further XXI. (the house)

The two men I saw were about the place where the street makes a zig-zag, and becomes narrower.

Eighth Witness (Sworn).

Giuseppe Carnia, Salita Santa Vicola da Torrentino, Rome. I am a professor in the University of Rome, in the faculty of Contagious Diseases. I belong to the Democratic Christian Party — now called the Popular Party. I am Rector of the University of Rome, appointed by Col. Poletti. I have known accused many years. I am on friendly relations with his family and parents. I first saw accused 5 or 6 years ago when he was ill. I have always had the impression that he was a young man of admirable, fine character. Since his illness I have known him to be a medical student, and have had occasion to observe that he was a young man of much discipline, studious, generous, enthusiastic, both in his medical studies and in his political movements. His enthusiasm sometimes created a notable spirit of sacrifice. He was always ready to compare himself with any danger. During the Nazi occupation I frequently saw him. Often he was forced to hide, and at times he would come to my clinic to satisfy his hunger.

No XXI in

Ninth Witness (Sworn)

Ivanoe Domenico, Via Orazio 31. I am Director of the National Institute Dei Infortuni — a state insured organization for insurance of labour accidents. I am husband of the fifth witness. On 5 June about 1500 hours I was going down the staircase of Via Condotti, with my wife, on my way to my office in Via Quattro Novembre 144. While descending the steps I noticed a young man in prison garb who was talking with some young girls of passers

DECLASSIFIED
NND 785074
By NARA, Date

situation. I was talking him after had happened on 5 June, and I mentioned this case. I met the Avvocato (Avv. Pecis) for the first time that day – he introduced himself. I knew him by name before that.

No Reaction

By the Court

I did not look back till I reached the summit of the stairs. I turned round hastily and saw a group of people who had already gathered at the spot. We were about half way down the steps, when we decided to go home. We went up the stairs as fast as we could. We had went 25-30 stairs to climb. It would take more than half a minute. By the time we got to the top and I looked back there was already a group of people. On Via IV Novembre vehicles were going by. I cannot say whether there was one standing still. The accused arrived from Via Quattro Novembre, coming from my right side. The young woman was at his side – I cannot say on which side. I noticed these two because there were very few people in the street. I don't think the accused had anything in his hand before he addressed Barbarisi. While the two were having their argument I could see only part of the body of the accused, especially the left part of his body. I did not see anything in the accused's hands during the argument – I saw him gesticulating during the first part of the argument. The Avvocato came to see me about the Institute. The conversation about this case was incidental. The Avvocato came to me for information, which he had to obtain for a newspaper. It was 15-20 days ago. I could only see part of the body of the accused, because the rest was hidden by the military men. I think the incident happened about 3.0, perhaps a little later. It could not possibly have been earlier than 2.30.

(Adjourned 1245 – 1430)

DECLASSIFIED
NND 785034
By NARA, Date

Tenth Witness (Sworn)

Sonnino Camillo, Via Nazionale 181, Rome — merchant.

On 5 June about 3.0 p.m. I was in a school near the Via Tre Cannelle, where I had been hiding for nine months to escape the Germans, as I am a Jew. That afternoon we were having a dinner in honour of the liberators. We heard some shots, about 3.0 p.m., I cannot say exactly. The school is in Via Tre Cannelle, and from the terrace I could see part of what happened. It is below the crossing of Via IV Novembre, and it looks towards the windows of L'Unità and the stairway to Via Condotta. The pistols shots came from outside. I got up and ran to the terrace and looked out. I cannot say exactly how many shots I heard, as I got up soon at once, and I was unable to count. There were definitely more than 3 shots. When I looked out I saw an officer on the ground, in a shirt with rolled up sleeves, his legs a bit spread out: I did not notice a cap. I also noticed a soldier of the Finance and a civilian. The soldier had a brief case in one hand, and with the other he was putting back the officer's pistol into the holster. The terrace I was on is immediately over a cinema — it is about 5-6 metres high. The civilian disappeared from my sight, because he crossed the street.

(After discussion it is agreed to admit, for what it is worth, the evidence of this witness as to the effect of a conversation he had with the Questore di Firenze — see P. 16).

I asked the Finance guard what had happened. He answered that an officer of the Finance had been killed. I asked him why he did not bring aid, because it seemed strange that he did not. I did not know whether the officer was alive or dead. He did not answer, as at that moment a priest came and stopped to speak with him. The Finance guard was about a step in front of the civilian. The civilian then turned back around the Finance guard and his-

56.

DECLASSIFIED
NND 765074
By NARA, Date

appeared from my sight. I saw the Finance Guard was putting back the pistol into the holster. I was the first to look out, then after a few seconds my Father joined me.

XXd

The School faces three Streets, Via IV Novembre, Via Tre Cannelli, and Via Cadmata. It is a High School, and I had been for 9 months — my Father also was hiding there. The Terrace faces Via Tre Cannelli immediately above the Cinema Magnolia. The first thing I saw when I looked out was the officer on the ground. I didn't see the second — because I did not know him. There were people there. I saw no-one with a pistol in his hand. The officer lying in the street did not have a pistol in his hand — but I cannot be precise because the distance did not permit me to see if the officer had anything in his hand. The Finance Guard was putting the pistol into his own holster, not the holster of the officer. I did not report to the police what I had seen. All I noticed about the officer was that he had his sleeves rolled up, and coat over his arm, but I saw nothing resembling an arm band.

No Question

By the Court

When I saw the Finance Guard he was in Via Tre Cannelli outside a tailor's shop where he had been. He was going up the Via Tre Cannelli. I don't know where he got the pistol from — for all I know it was his own. When I first saw him he was walking away from where the officer was lying. He was then some 6-10 metres from the officer. I was there on the terrace roughly in the time it takes to go twice the length of this room. The shots ended whilst I was on the way. I did not see anybody else with a weapon, and I saw no weapon lying about. I looked at the dead officer, but my attention was distracted by the Finance Guard. I did not see a pistol lying in the

DECLASSIFIED NND 785021 By NARA, Date

street close to the " 2 officer's head. There may have been one there but I did not notice one. I stayed there for some time, I cannot say how many minutes. I cannot remember a jeep driving up. I did see an officer — I think he was British by his hat — who approached the body and took photographs. He arrived in a car — I believe a Jeep, but am not sure. I only saw the Officer — I did not see any soldiers with him. It was 5-10 minutes later, maybe 13-14 minutes.

(Case for the Defence).

Prosecuting Officer applies to call a fresh witness who has been discovered since prosecution's case was closed.

Court rules that witness cannot be called in rebuttal under Rule 9. Court invites Defence to state whether they object to witness being called by the Court under Rule 9(E).

Advocate for Defence objects.

Court rules that witness be heard and examined by Court.

Witness called by the Court (Sworn)

~~To~~ Maccione Antonio, Caserma di Finanza, Via Labicana 9, Rome. I am a member of the Finance Guard. I was serving as such on 5 June, though I was not on duty. On the afternoon of 5 June I was walking on Via Tè Cancelle when the incident of Liuzzi happened. I had never seen him before, and did not know him. I cannot say the exact time, but it must have been about 1430. I was walking along Via Tè Cancelli going to the Barnabites. I was going up the hill in the direction of S. Maria Maggiore. I was coming from Piazza Venezia. I was in the part of Via Tè Cancelle that goes up towards the stairs. At the moment I was passing I saw an unknown officer, with trousers striped with yellow, talking

DECLASSIFIED
NND 765074
By NARA, Date

some posters. The officer was in V. Tè Cannelle. The posters were exposed in certain open windows, on Via Tè Cannelle. I was on the right side, and the posters were on the left side. The officer was 8-10 paces away from me — just across the road. I don't know what rank the officer belonged to, but he had an armband, a white band with black stripes, on his left arm. I thought he was a police officer. He wore a yellow band on his trousers, and I inquired he was an officer of the Finance Guard. He had a pistol in a holster on the left side of the belt. He had no hat. He had a jacket rolled with the lining inside out, which he was carrying rolled over his left arm — the lower part of the arm. The arm band was on the other part. His appearance seemed strange, and I was surprised that he was not wearing a hat. I don't think he had been drinking. While I was going on my way I heard a shot. Hearing this I turned round and saw the officer falling back towards the ground, crouched with extended pistol continuing to fire. I had seen Bentivegna when I was passing the door of L'Unità. The first time I saw him was when I turned round on hearing the shot. I was just above the turn of the street when I saw this. Before hearing the shot I heard no shots. After I turned round on the first shot, I heard 3 or 4 more shots. Bentivegna fired them all — he was the only person who fired. I am sure of that. There were 2 or 3 other people there — civilians — but I saw no arms. I don't know whether the Lieutenant got his pistol out, because on the ground I saw no pistol. Seeing the dangerous conduct of Bentivegna I went to report to my superior, continuing ahead towards S. Maria Maggiore. I could not render assistance to the officer, because a crowd was still there, pistol in hand, until such time as I disappeared. This prevented my going to help — also

DECLASSIFIED
NND 785074
By NARA, Date

because I was his aid. I had no pistol on my belt. I don't remember if there was a Jeep with Americans in it. I did not say anything, Buttiveglia said nothing to me. The pistol was pointed at the dead man, and I was in that direction too. I could not approach him to ask him anything. When I saw Buttiveglia at the door of L'Unità he was standing there looking into the street. He was alone at that time. I did not see anything in his hands. I could not see if he was armed. I was walking along the street, minding my own business. I said the dressed looked like a "Carabiniere" officer, because I could not distinguish whether he was an officer. He had the tunic, pants & boots of an officer. The fact that he was leaving the position was the thing that made me suspicious.

(Adjourned 1730 hours)

20 July 1944.
Court re-assembled at 0920 hours.

xxd Lt. Sabatino

When I saw the Lieutenant leaving from position I was directly across the street from him. I just turned my head to look at him and continued walking slowly. I did not look at him again till I heard the shots. When I heard the shots I looked round again. I turned back a few steps and I saw him fall back to the ground. I saw a civilian with a gun in his hand. Before I heard the shots I did not hear anything else – I was absent-minded at the time. I did not say anything to the civilian. I was a little frightened as Buttiveglia looked so threatening. I thought it would be impossible to approach and identify the wounded man and Buttiveglia. I was dismayed and I thought I too might be called. I went for my barracks, hoping that on the way I should meet an agent, who could help in the identification. Being unable to find an agent in the street, I had to go right to the barracks where I reported the facts to my adjutant.

DECLASSIFIED
NND 785024
By NARA, Date

I was away that day, because that morning I met a fellow countryman on Piazza Vittoria. I was approached by 5 soldiers who asked me to show them my pistol. I showed it to them, and they got it in their possession and ran off. That is why I was unarmed that day.

xxd Arr. Penis

That day I came out of hospital and went to a house of friend. There I ate and went slowly to my barracks. I came from Corso Vittoria, by Piazza Vergin, along Via Quattro Novembre to Via Tre Cannelli. ~~[illegible]~~ After the scene I met no one else on Via Tre Cannelli. I was walking alone. It took about 30 seconds to get out of Via Tre Cannelli. I was walking fast. At some points I ran, but I was stopping to see if I could find anyone to bring aid. It is 30-40 metres from the scene of the shooting to the end of Via Tre Cannelli. I covered that in about 30 seconds, but there was traffic and I could not cross. The rest of the street was deserted. The other people I saw were below. There were 3 people in the direction where Bartesi fell — I am speaking after the incident. I did not approach these three, because I did not know them and did not know their intentions. I did not speak to anyone, and no one spoke to me in Via Tre Cannelli. I was dressed that day as I am now — with nothing in my hand. I was wearing a beret, and not the planned hat. Immediately after I was disarmed I met a superior to my superior. My legion is at Santa Maria Maggiore. It is about 1 - 1½ km. from Via Tre Cannelli to there. In that distance I met no police agent. It was about 10.0 a.m. when I was disarmed. I was then coming from my barracks. I reported immediately to my superior. They did not give me another weapon. I had no weapon in the afternoon. It would have been useful to have one, as I could have acted in the case of the

123

DECLASSIFIED
NND 785014
By NARA, Date

incident of Bari again. If I had found him on the ground and would have handed it in to my Commander. I went to the hospital in the morning for treatment, after I had reported to my superiors about the loss of the weapon. I was being treated for bronchitis. The hospital is in Viale del Re. After leaving the hospital I went to my sister's house, in Via Cremari, to eat. I went there about 11.45. I stayed there about half an hour. I was without my weapon then. Leaving my sister's I stopped for a while in Piazza Navona. I then went to Palazzo Braschi. Then I went through L'Arco Argentino and on to Piazza Venezia, thence on to Via IV Novembre.

I was 7-8 paces from Barbisi when the incident happened. Barbisi was carrying his jacket rolled on his left arm. I remember it was the left arm, because I saw the band as well, which is worn on the left arm. He was wearing a shirt with long sleeves. I noticed the band on the shirt. At first I was surprised, but then noticing the yellow stripes on his trousers, I concluded Barbisi was an officer in the Finance Guards. Before 5 June officers were authorised to wear shirt-sleeves, in public and on duty. I was going to my barracks for reasons of duty. The hospital is called Gallicano.

Lt. Tamotta Aldo (recalled by Court)

There was a holster on Lt. Barbisi's belt. When I saw Barbisi's body afterwards, I did not see his pistol. He worked around on the ground but found nothing. He only arrived some 2 hours after the incident. I am sure by description that the pistol was not in the holster, which I saw was open and empty.

Castelli Alberto (recalled by Court)

As soon as I heard the news I hastened to the scene, on foot. My H.Q. is about 200 yards away. I cannot exactly know how long it took, or how long after the incident I got

DECLASSIFIED
NND 785024
By NARA, Date

there. I - and the deceased was armed, because he had a belt. I did not see if he had a holster. Where the holster should have been was covered by a coat, and I remarked nothing. I cannot say either whether there was a holster or, if so, whether there was anything in it. There was no pistol beside the body, either in his hand or on the ground. I did not look for one, but if there was one lying about I should have noticed it, as I walked around the body. Where the incident happened there was no crowd, but there was a crowd in the vicinity. I did see a man on the scene who had a pistol, but I cannot say if it was his own or the deceased's. He was a civilian, but he had an armband, and one with the letters VL. That was the accused. With the accused was a blonde young lady who had a pistol, but not in her hand - inside the belt. I cannot say if there could have been the pistol of the deceased, as I did not examine it. The pistol was just tucked into her belt. There was a third armed person, but he had a rifle and I don't know if he also had a pistol. So far as I know these were the only armed people on the spot. I saw nothing of a Jeep in the neighborhood. I saw no American officer on the spot. But there was a group of people on the corner of l'Unità Building, and another group on the opposite corner. There was one member of the Allied forces in the group at the corner. I saw no marks of smoke. He raised to his eye something that looked like a camera and took a picture. I had never seen Colantonio Ovidio before. He looks familiar. He certainly was not on the scene when I was there - but he may have been in one of the groups at the corner. I don't know if there is a Bar in Via Tè Cannelli. I did not see a Jeep standing anywhere in Via Tè Cannelli. I was on the scene for about 20 minutes approximately.

12

DECLASSIFIED
NND 785024
By NARA, Date

xxd Avv. Nicodemo.

There may be a bar on the upper part of Via Tre Cannelli, and there may have been a pump there — but I never went beyond the corner where the road makes its sharp turn.

xxd Lt. Sabatino

I think the pistol the lady had was a Beretta — an Ordnance type, large size. It is the type normally issued by the Italian Army.

Carla Cappuzzi (recalled by Lanza)

I remained on the scene of the shooting for about 20 minutes. When the Lieutenant fell, the pistol was in his hand. Then he raised his hand a bit, thrust his arms forward — then he brought his arms to the height of his head, opened the palms, and the pistol fell to the right side of his head, near his hair. It remained on the side of his body for some time — 5 or 10 minutes. Then I went away from the spot for a bit, by order of the Finance guards who had arrived on the scene to keep public order. These Finance guards have not been witnesses in this case. I returned later, in the time it takes to go up the stairs to Via Cavallotti and return. When I returned the pistol had gone. I cannot say who had taken the pistol. I asked the 3 Finance guards and a policeman in civilian clothes with an arm band, and none of the four could tell me anything about it. There were many civilians there, especially many soldiers. I did not have an arm till immediately after the incident. But then 3 young men who had mounted guard over the newspapers came — the spot. Alessandro told them to go back to duty, but one of the three gave me a pistol. I have already testified about this to Capt. Greenhill. It was a Beretta 9. It is not right that I had a pistol at the time of the incident. (Castelli Alberto is brought into Court). I don't remember seeing this man before.

64.

DECLASSIFIED NND 785024 By NARA, Date

I do not see, see him. Nobody in an official position under the Patriots' organisation came on the scene and questioned me shortly afterwards. No — (question misunderstood) A civilian with an armband did come up and ask questions. It was not Castelli Alberto, but a policeman in civilian clothes who arrived immediately after the incident. I did not take his name. He has not been here to give evidence. I am surprised at that. I should know him again. It was not Colantonio Ovidio, the Brigadiere who gave evidence here. I recognised him in Court, recognised him as one of the first who arrived on the spot. I don't remember what he did when he arrived. I don't remember if he arrived alone or with anybody. When I remember seeing him he was on foot. Right away I did not notice if there was a car. After a little I did notice a stationary car, from which an officer got off, who took some photographs. He was Allied, but I don't know whether American or British. I cannot remember exactly where it was, but it was very near the ~~incident~~ scene of the incident. The vehicle was a Jeep. I only saw the officer when he took the photographs. I do not say he came out of the Jeep. I only saw him when he tried to take photographs. I opposed, but he told me he was a police officer, and I let him take exposure. I did not notice if anyone was in the Jeep. I spoke a little English. I spoke to the officer in English. I don't think the Brigadiere of Carabinieri was dressed 1/2 Bersaglieri. I think he was in civilian clothes.

xxd Arv. Penis

(Statement of Witness called for, which admissible by the Court, and put in marked Exhibit 4).

No other questions.

xxd Lt. Sabatino.

I remember that Colantonio Ovidio was in civilian clothes.

DECLASSIFIED
Authority NND 785024
By NARA, Date

Had he been in my mind I should have said more. But I cannot tell you any more as to how he was treated.

By the Court

The statement was taken in Italian by means of an interpreter. The English was retranslated by the interpreter into Italian. I corrected one or two words and then I signed. It was the English translation. I was frightened. I did not recount the story. My answers were reduced to writing. I am satisfied that the statement does represent what I wanted to say. I was called before Captain Grundell on 24th or 27th. I was not arrested. I was invited to go there, and I accepted the invitation.

DECLASSIFIED
DND 785094
By NARA, Date

The Court directed that it would not grant adjournment for the Defence on the first three points submitted by the Defence in opening, but that the argument should be directed to the remaining seven points. It was agreed that the Advocate for the Defence should address the Court in Italian, the Court calling for interpretation only where any member failed to follow the thread of the argument. An application by the Defence for permission to have the last word was refused. At the request of the Defence the Court adjourned till to-morrow morning.

(Adjourned 1230 hours).

21 July 1944.
Court re-assembled at 0920 hours.

Lieut. Salvatino

Within the last half hour a new witness has reported to me, who claims to have been an eye-witness.
Court, after hearing the Defence, rules that the witness shall be called & examined by the Court.

Alessandro Virgilio di Cesare (Sworn)

I reside at Via Di Pastini 133, Rome. I am a florist. I came to Court this morning, because I read in the newspaper that you were looking for a photograph taken by an Allied officer, which showed me with a rifle at the scene of the incident. I have no such photograph, but I know that an officer took me at two pictures. I don't know who the officer was, but he was an Allied officer – I cannot say if he was British or American. On 5 June ~~[illegible]~~ at 2.35 I was in front of Via Tre Cannelli 122 and Via IV novembre, just beside shoe-shop of Battaini – that is the same as L'Unità building. I was on duty waiting for my captain who had ~~[illegible]~~ gone to see another captain in a nearby building. I belonged to General Bencivenga's forces. I was a Sergeant Major. I was dressed in civilian clothes with an armband – ~~[illegible]~~ a white band with a tricolour centre, marked "Polizia".

67.

DECLASSIFIED
NND 785024
By NARA, Date

It was issued by our Captain on the afternoon of 4th June. I belonged to a different organisation from the accused. I don't know Castelli Alberto. My organisation did not belong to any one political party. It was composed of elements of the Army. I was mostly in the Army. Our job was to seize the Barracks here — my Captain with 8 men was to seize it on afternoon of 4th and held it until the Allies arrived. On 5th an Allied Officer arrived and took over, so we went away. At 2.35 p.m. I was not on any particular job — I was just waiting for my Captain on the street corner. I was standing with my back to Via Tre Cannelli. I heard 2 or 3 people talking in an agitated way, behind me some 15 metres away. I could not hear what they were talking about — they were men. I turned immediately. When I turned I saw a young man dressed in grey, with his back to me, who was pointing a pistol and firing. As soon as I turned he began to fire. He fired 3 or 4 rounds. He was shooting at a military man without a coat. The military man was facing the civilian with his front facing me. He was 1 – 1½ metres from the civilian. I did not know who either of them were. I would know them again. I recognise Bentivegna in Court — he was the one who fired. I recognise him because afterwards I stopped him. I believe the military man was without a cap. I could not tell what organisation he belonged to. At that moment when I ran to the spot I did not see any arms. I did not see any later. I looked around and did not see any among. I did not notice if he was wearing a belt with a holster. I did not look — I only looked round the body. I did not see any arm on the ground around the body. He had no arm in his hand. He appeared to me to be a completely unarmed man. There were

DECLASSIFIED
NND 785024
By NARA, Date

Some people ran, we many, but my attention was fixed on these two. I cannot say whether any of the others were fleeing past. Nobody else fired. Bentivegna was alone. I recognise Carla Capponi — she came to me when I was with Bentivegna, as soon as I stopped him. She was coming down from Via Tè Cornelli. I cannot say if she was there at the time of the shooting, nor whether she was with Bentivegna at that time. To me Bentivegna seemed alone. I was a little perplexed, but then I began to turn towards the scene, and I stopped Bentivegna. He was coming towards me with weapon in hand. He was coming away from the scene. I stopped him by asking if he had gone crazy. He said "He was tearing down the posters of L'Unità". He made a gesture to give me the weapon, and then drew back and said "No, I will not let myself be disarmed". I said "That's quite all right — put it back in your pocket". As soon as he put it back Signora Capponi approached us. She was armed with a pistol, carried on a belt. I asked first Bentivegna and then Signora Capponi for their documents. Bentivegna told me his documents were false, because he was being sought for. Signora Capponi had no document. I asked what duties they were performing, & Bentivegna told me he was doing duty for L'Unità, and I took the no. of his contract, 6577. Signora Capponi had no command. Then I accompanied them to the newspaper L'Unità. Before going, I saw there a third lone person with our hands similar to mine, and I had the people drawn back from the scene. 2 or 3 companions of Bentivegna participated in this. As soon as I stopped Bentivegna I went towards the body, and at that moment the man died. It was then that I took to see if he had an arm. I don't think anybody reached the body before me. I did not see a pistol near

DECLASSIFIED
NND 785034
By NARA, Date

his head. If this had been me there I think I should have noticed it. Before I went to the newspaper office a jeep arrived, and an officer got out and took some pictures. It was some minutes after the shooting, say 1 - 1½ minute. After taking the pictures the officer went away. I don't think he took any further interest. There were 2 or 3 other people in the jeep. A priest came and knelt beside the body. On the way to the newspaper office I met a Carabiniere in uniform, and I asked him to take an interest, but he said he had to go to report for duty. When I went away the body had been covered by a sheet. I did not meet Bentivegna since I did not know the circumstances. Bentivegna was wearing an anorak, and in my view I am not an agent of P.S. When I got to L'Unità office, I asked who was in charge, and a gentleman called Terenzi presented himself. I made a report to him on what had happened. Terenzi did not put him under arrest. I left them there and came away.

xxd Lt. Saltarino.

Bentivegna came towards me, pistol in hand, and he said "~~[illegible]~~ Romano (or Italiano), so die traitors to their country." He said that to the world at large. I did not hear any shots before I turned round. They seemed to be a succession of shots. I cannot say how far up Via Tre Cannelle Giovanni Cappuccio was. I did not say anything to the dying military man. He did not appear to try to say anything to me. When he fell he tried to get up, but fell back to the same position. I saw him fall in the first instance. I did not notice anything in his hand. He drew his last breath before my sight. I made a report to the Allied Command after I had seen. I first went to

DECLASSIFIED
NND 785014
By NARA Date

Commissioner, Angra Pequena, and I dealt on accompanying letter from the Commissioner which he had given me. I was told by an Attach Superior it was too late that evening and I was to come there at 1430. It was some time 4 days later I Commissioner Angra Pequena in the District H.Q. in Public Security. When I went into Prisoner's Room, I found Buttwiga. I also found a plain clothes police agent, and he said that they wanted, and he said for a typed copy. The girl typist said she could not type it so she had to make them transcribe it when Buttwiga was explained case in. Between you & the P.S. after came and wanted for my instructions. I gave him my statement, & having the book go into the Captain, & would be returned. I asked for a copy and a receipt for it - but the agent said the Captain said they was unnecessary. I said that the accompanying letter. I wished for Lutzen time for thinking over the matter. I called the interpreter asked him to turn in the letter & give the Captain what I was to do with it. He returned said the Captain stated we should call some agent if he wished it.

xxd Aw. Pering

On 25 June, at 2.30 - 3.0 p.m., I was in lower of Via Tè Cannelli - Via Chiatto Nomiche. I was standing still and alone, waiting for my Captain. I was alone for about 10 minutes. I was standing still in the same place, moving a little and turning; looking more or less in the same direction most of the time; nothing the Accused taxpayer in Via Chiatto Nomiche. I saw the accused people going by. I subsequently Buttwiga, I and Buttwiga

7K. REGION IV CASE No 7762

DECLASSIFIED
DND 785084
By ... NARA, Date ...

[illegible] conversation [illegible] [illegible] heard 2 or 3 people [illegible] [illegible] [illegible], not [illegible]. After firing Bentivegna stepped on the sidewalk with a [illegible] in hand, and immediately afterwards came towards me. He came towards me spontaneously. I was about 10-15 metres from the scene of the incident. He did not [illegible] towards me. I was going in a few steps towards him. I [illegible] myself [illegible] the body. As soon as we met we [illegible]. The first thing that came to my mind was to stop Bentivegna. Then he came with me to the body.

I was wearing a white hat with a tricolour strip in the middle. Bentivegna said that was totally tricolour. I was totally armed. I had an automatic rifle. Perhaps Bentivegna took me for a partisan, perhaps not. I asked him for his description. He was then that Miss Cappuccio came up. I could not [illegible] him to [illegible] alone. The [illegible] appeared to [illegible]. I did not believe Bentivegna to be in a state of anger, or in a state of "furore". If it was possible I should have killed him. I did not know Miss Cappuccio for their names. Actually [illegible] show me his false documents, but he told me their [illegible]. He still had not gone to the body of Barbarisi. It was 35-40 seconds from the shooting to the time when I actually met Bentivegna. Then [illegible] I went on to the body [illegible] 20 or 25 seconds. It may be more, I don't know how much time. Along [illegible] passed and I cannot remember [illegible] long [illegible] was. It might be 1½ - 2 minutes. Barbarisi was [illegible] grey-green shirt. I did not notice anything [illegible] dominicale [illegible] his gloves [illegible]. I did [illegible] if he was an officer. I don't remember [illegible] left in [illegible] I approached the body, is

REGION IV CASE H 71 82 .7F.

DECLASSIFIED
NND 785084
By NARA, Date

seemed. — Yes. When I arrived, I had no hesitation, but
then in my panic I took some notice. I did not
notice that Bartolini was in uniform. I did not see one.
I did not examine Bentivegna's pistol. I did not take
it in my hands, or I don't remember if he showed it to
me. I don't remember if he showed me the missing rounds.
I don't know who picked up the shells from the ground.
I don't know. I don't remember if I touched the body or more is
slightly on the body. I did not think of examining the
body. I did not notice if Bartolini had a holster — or a belt.
I did not check up on the passers. There were few people
when Bentivegna and I arrived on the body. On arrival we
cleared them away. No one was on the scene before me.
I did not see anybody around the body before me — it is
possible that someone did. I did not see any Fascist
Guards around the body. When Bartolini was hit he
turned to the right — his left side. He was lying
on his right side facing the street. There were people
standing in front of L'Unità building, on the other side. It was
light. The shots were loud. Before the shots
I saw nothing. I don't know what happened to the
jeep after the officer took the photographs. I did not
see if the Jeep came back. I saw the officer
going towards the Jeep, but I did not see if he
got in. I reported to the Commissione Nazionale
Nobili in the same day by letter. I gave to A.M.G. I
only then
gave the name of Captain Tito Lucrezio. My
Captain is Pallastrelli, Filippo. He was also captain
2 years ago. He was not present on the incident.
The same day for hope I accompanied Bentivegna to
the newspaper office. I agree it was only on the
23 that I reported to the P.S. or A.M.G. up.
to then I had reported only to my captain. I made

DECLASSIFIED
NND 785014
By NARA, Date

a written report of fact, it may cost him 3-4-5 days afterwards. I came here to-day because I read in the "Avanti" this morning that there was a photographer containing a man with an automatic rifle, and I was the only person dismissed. I thought I had better come here. But for that article I should not have come.

Avvocato Pecis applies for permission to have Accused, Carla Capponi, and Colantonio recalled, also for permission to call Terenzi.

Mr. Sabatino

I object to the case being reopened. But if I am told what they are to be asked, and the inquiry is limited to that I should not object. I do not make any distinction between my q/te four. But I insist that we should know beforehand what is to be asked.

(Adjourned 1230 - 1400 hours)

Court rules that at the present stage of this trial is cannot hear further evidence from Carla Capponi or Colantonio. But leave is granted to call the witness Terenzi, to be examined by the Court. Accused will be given the right to go back into the box with the witness and make a statement, instructed lawyer to know matters which were dealt with in the evidence of the last witness.

Arnaldo Terenzi, called by the Court, sworn, and examined by the Court.

I live at Via Doplino 15, Rome. I am on the commercial side of the newspaper L'Unità. I know the accused. I was in the office of the newspaper working that afternoon. I saw the accused that afternoon. I saw him several times. An incident took place outside our office that afternoon. I was not a witness myself. But the incident was reported.

DECLASSIFIED
NND 785014
By NARA, Date

I was in my office when I heard some shots. I went from stairs & saw people going towards Via Tè Lancelli, and I myself went outside and went in that direction. I saw a young man in shirt sleeves on the ground. I did not see the accused in the confusion. I did see the accused later that afternoon, about 20-25 minutes after the incident. I saw him in the office. There were several people there, including a volunteer of Liberty who was asking for his identification. I recognize the last witness as the volunteer of Liberty. I don't remember specially who else was present. It was agreed by me because I was alone in the office, and it was agreed to see that someone had removed posters and it was agreed to see that someone had removed posters. The volunteer of Liberty brought Accused to me to identify him, and I was able to identify him. The accused told me that in the street he had seen a person fleeing from position from the crowd; that having insisted this person to stop, the latter had resisted in an unusual manner and had drawn out his pistol; that in order to disarm him he had shot him — that is what I remember. The volunteer of Liberty was present when accused told this story. I am quite sure the accused told me this story that day. The V.L. asked me if I knew accused, and if I could say that accused was guilty or not. I was able to identify the accused. The V.L. told me that as he was passing by the dead man a pistol shot; he told me that he ran and that after he saw a person on the ground and asked what had happened; that he asked accused for his identity, and seeing that he had false papers, brought him to the office to confirm his identity. I remember that he did not tell me he had himself seen the incident. What he said was that he was passing at some distance.

306

DECLASSIFIED
DND 785084
By NARA, Date

xxd Lt. Sabatine

The V.L. when he came to my office was not particularly excited. I don't think he came in for any purpose other than to identify himself. So far as I could see there was no contradiction between the accused and the V.L. I don't exclude the possibility that the story might have been told in greater detail. There did not appear to be any contradiction. There was no particular reason why he should have given me a full, detailed account.

No xxtion by Defence

By the Court

I was not in Court here this morning, nor at any time during this trial.

Capt. Greenhill recalled (xd by Court)

I have not see Alessandrini Virgilio before this morning. His name converys nothing to me. So far as I remember nobody came to my office or left a statement on 23 June. If a statement was left in my office relating to this case, it must come to me. I have searched the office to-day, and can find no such statement. I cannot of course exclude the possibility that such a statement is somewhere in the office — possibly in the wrong file — but I don't think I remember seeing such a statement, and I should certainly have been glad to receive one in this case. I believe there was a military police office in the same building on 23 June. It is of course possible that the person bringing the document may perhaps have taken it to the military police office. It is not a thing that

DECLASSIFIED
NND 785084
By NARA, Date

Her soap [illegible] in my experience. I have not made any investigations to see if this, the new one, is for the military police office. Normally a person who has a statement to make will be shown into the one, and not left with the other office. But this man came with an Italian statement, and would have had him shown in there, and would have taken my own statement in English. (Evidence of Alessandrini and witness) That does not bring anything to my recollection. I do remember being consulted in many incidents like that.

xxd Lt. Sabatino

Does he have an Italian P.S. assigned to my office – called Rodriguez. I don't think I should take a statement like that personally in a case like this. No other Allied Captain took a active part in this case.

xxd Avv. Piccardi

I know the name Pinotta. He was interested in this case, acting under my instructions. He was present at the interrogation of the accused. Pinotta may have seen this man come with a statement, but I have not asked him. I have never heard of the Commissario Maggio Napoli. I do not remember receiving a letter from there.

Accused recalled to finish statement

I did not immediately escort Alessandri, leaving the Lieutenant, but after a little time when Lieutenant was already on the ground. I went to meet Alessandri, because nothing an armed civilian I wanted to see what information he intended to. I explain that he was there. When I saw that he had with "Polizia" on it I put my pistol at his complete disposal. He took my pistol in his hands, he examined how many rounds were missing from the clip, and he checked that 3 were missing.

DECLASSIFIED
Authority NND 785014
By NLR NARA, Date

As already stated, he told me he had 5 shots. When my companions did come out to take my pistol, I refused them here to their faces. I and Carlo Lapponi took care of closing house doors. Alessandri gave me back my pistol, which I then kept in my hands. I immediately proceeded then on the day I was at the Allied Command, waiting to hand it over to Capt. Grenfell. Alessandri did bring in a statement, which was read by Pinetta. I believe it was presented to Captain Grenfell. As I remember right, the agent Pinetta or the inspector brought the statement in to hand it to Grenfell; it was on half sheets, folded and written on both sides.

and Lieut. Sabatino

I don't think I said "Italians, this is low treason" did I. I don't remember doing so, and am almost sure I did not. I remember that the three agents, after a minute or two, began to shoot for the pistol. Many people were near the body, and I with others was to keep order and keep the public away. Alessandri was left the pistol presumably to go near the body. I don't know who was. Alessandri treated me as a companion. I had not seen him together afterwards, I don't know what party he belongs to yet.

Read

Alessandri and I went together by argument into the Municipal Building, and I remember talking to Terenzi. There were quite a lot of people there already.

DECLASSIFIED
Authority NND 785024
By NARA, Date

Aw. Nie. raj. sums up for the Defence:

You have to resolve any doubt in favour of the accused.
The Court for this case formed an inferior court – but I stress that it took place in an atmosphere of war, & that affects the relation of the conduct of the parties.

Although the Allies had entered Rome, normality had not yet returned to Rome, and it was not even certain that the last German had left.

It is a, negative, why Bartolini should in this day be guilty of an act so hostile to liberty as to tear down these posters. Accused's motives were perfect morally, politically, juridically. I don't say that this alone would justify acquitting, but it justify himself in being offended, and even in uttering threats.

But it is necessary to examine the reaction of Bartolini. This is a position in which there is a conflict of witnesses. You should accept the evidence of Carlo Coppini. You should accept De Tuddo, who was completely independent, also Mr. Hughes, whose spontaneous reaction was so clear. Also the evidence of Colonnello. It is not our fault that we could not support his evidence with that of his prisoner friend. Maybe there are curious features in his story – but no more than other things in this case which are generally admitted. There is no doubt Colonnello's sincerity. There is plenty of corroboration that his talk with the American officer was true. The evidence against the accused is not acceptable.

(Captain Gentile arrived bearing the missing statement, which he states has been found in the office, in the wrong file. Court rules that it be shown to the Defence, who may use it in evidence if they think fit to do so.)

Defence after seeing the document decl. that it is in evidence. Document received and marked Exhibit (5).

DECLASSIFIED
NND 765074
By NARA, Date

Avr. Needay continues

The witness Castellano was evidently hostile towards for some reason. You cannot believe her story. For one thing — on her story all three bullets would have hit Barbarisi. Even the evidence of this witness, however, supports my defence of legitimate Defence.

You must believe that Barbarisi had a weapon and was using it — otherwise there was no possible motive for the killing.

There is some mystery behind the evidence of Alessandri. Why did he appear so late on the scene? If his present story is true, he would have been found to contradict Barbarisi when they interviewed Tenerzi immediately afterwards. The original report, now produced, is consistent with my case, and shows that from the outset the case of the accused was that he acted in self defence.

It is quite likely that accused would be doubtful, from the loss of the Record, whether we were friend or foe, — his actions would suggest the latter. I do not think he intended no harm by drawing his pistol.

(Adjourned 1900 hours)

22 July 1944.

Court re-assembled at 0910 hours.

Avr. Needay continues

The experiences carried out by accused in Cairo show the extreme rapidity with which the events took place.

Homicide is dealt with in Arts. 575 and 584 of the Code.

There are 2 forms of homicide, intentional and preterintentional.

The idea of self defence negatives the notion of intentionally killing but counsels that only the proper degree.

Homicide may be (1) voluntary
(2) Preterintentional (including manslaughter)
(3) Colposo (negligence or imprudence)

Legitimate self defence does not apply to homicide alone, but to all acts which might otherwise be criminal.

Aggravating and extenuating circumstances (Arts. 61 & 62) apply to all forms of crime.

80.ET

DECLASSIFIED
DND 785084
NARA Date

Sinibaldi & Tamaitta p. 149 – which again – aim that is meant by "practical self-defence". I also refer to an Article by Prof. Stallybrass in "Il Progetto Rocco nel Pensiero Giuridico Contemporaneo", at p. 77.

In order to come to a decision you must put yourselves in his place in that situation. Nobody could have acted differently.

I ask you to remember the part assigned played in assisting the Allies in the Partisan movement.

(In answer to a question by the Court is another world in the position in Bartolini had fired first and killed Bartolini). That might be a case of "Reciprocal" Self-Defence, as suggested by the Court Fiscal.

Lines, Sabatino sum up:

This case must be decided on the facts, not on the brilliance of the Advocate's defence. There is considerable conflict of evidence in detail – though the general effect is the same. I shall say that any of the witnesses we have – this is the familiar case of a number of people seeing the same thing happen but giving different versions of the details.

There are three possibilities:-

(1) Accused approached Deceased and fired without giving the Deceased time to run!

(2) Deceased fired unknown to or despite, who fired in self defence!

(3) Deceased fired unknown or unseen, and the latter fired knowing he had shot fired upon him.

Accused acted because Deceased was taking from prisoners, and he shot lying deceased in a cowardly manner. He shot the Deceased in a cowardly way if he had seen the Deceased. The evidence taken in the village was anti-Fascist, and therefore the Deceased was in judicious. The fact that the prisoners were

DECLASSIFIED
NND 785047
By NARA, Date

(In answer to a point by the Court I Prosecuting Officer stated that he does not intend to prove "aggravating circumstances" under Art. 61 (10)).

As to extenuating circumstances – I say that accused is wholly faultless, has surrendered totally I rely – Art. 62 (1) and (2).

My defence is based on S. 52 – I indicate S. 55 as a possibility. S. 52 is designed to deal with reaction to danger, not to actual physical danger, and the reaction must be immediate.

I respectfully hope I can rely on S. 52 there must be actual necessity. This needs very delicate weighing, and must be viewed subjectively, as it appears to the man in the state in the light of surrounding circumstances, and not objectively in the cold atmosphere of the law court – see Art. 59. Art. 52 would provide a good defence, notwithstanding that the Court considered the accused actually right in the circumstances that presented themselves to him – the error was justifiable. The collateral legislation defence Putativa – it is covered by Art. 59 (last paragraph). But the accused's error must be a reasonable error. If he is guilty of unreasonable error, then it is a case of "culpa", to which we turn to Art. 55. This is considered by the Code specifically in relation to self-defence, vide Art. 55. Art. 55 applies only to cases of alleged self-defence. In this case the punishment is fixed by Art. 59. The discretion is limited by the limits set in the section – but in certain cases there is a power to suspend sentence (see Arts. 163 and 164).

115

All this is roughly, because I rely on reasonable self-defence, and not on "culpa". Legislative self-defence in the Spanish Code is by "homologi" law. But I also rely Tolosa Injerto, Magazine, Vol. II, p. 320 (2nd Edn.), which contains a statement dealing particularly with "legitimate defence putativa". I also rely on "Guardpinting's Principle" by

DECLASSIFIED
NND 785024
By NARA, Date

that of a communist party is not important because it is a fact that that the accused personally. It does not follow that the man throwing down a communist posters is a fascist. Assuming the truth of the accused's statement does his action amount to self-defence. Self-defence implies that there is a peril which there is no other way of avoiding, and that the force used is no more than is necessary for the purpose. Because the deceased pointed a pistol it doesn't follow he was going to fire. In any case the accused had other ways of dealing with the situation, e.g. reasoning with him, seizing his pistol, if necessary firing at his legs. I fully appreciate the atmosphere in Rome on 5 June. Accused had no ground for thinking that deceased was actually going to shoot. Deceased had had an opportunity of shooting at early, and had not shot.

As to Italian law, the only extenuating circumstance that accused could possibly rely on are those in ss. (1) and (2) of Article 62. I say that neither of these sections do apply on these facts. The pulling out of the pistol by the deceased was not an "unjust act" in the circumstances, since being in uniform he was in authority. I think Art. 59 does not apply — this applies only to an act which is prima facie lawful, e.g. one person giving another a push which unfortunately results in death.

In answer to Court's last question to the Defence, I think that you cannot possibly have legitimate self defence on both sides. One must always be the aggressor.

By the principles of all civilised states the unlawful taking of human life is a thing that must be punished. If you think no other course was open to accused, you will acquit him — otherwise you must convict.

(The Court adjourned at 1230 hours to consider its judgment).

DECLASSIFIED
NND 785024
By NARA, Date

Am G/ACC.
H.Q.
Piazza Venezia,
Rome,
23rd June 1944

Statement of BENTIVEGNA, Rosario, fu Vincenzo, age 22yrs., Medical Student, of Via Torino, No 122, (apartment on second floor). Rome, who says:

I have been cautioned that I need not say anything unless I wish, but anything I do say will be taken down in writing and may be used in evidence.

Bentivegna Rosario –

I was a partisan in Roma and in the Country as from 8th September, 1943, when the Armistice was signed. At that time I was a Communist, in fact, I still am. I was arrested on 20th September 1941, in Rome by the Fascist Police on Security grounds. I was taken to the Questura in Collegio Romano

Bentivegna Rosario

DECLASSIFIED
NND 785024
By NARA, Date

and was interrogated because they fo
ret that I ordered on 5th May. 19
in distributing Anti-Fascist vill
They kept me for four or five days and
released on the condition that if I w
caught again circulating this propaga
within three years I would be
imprisoned. After about eighteen months
again started my Communist activi
During the eighteen months I
~~had stopped again and~~ took up m
medical studies. In February 19
because of my age, I was call
up for the Army and was put into
Sanitary Company, No 8. and remain
in Rome in the military Hospital a
Celio. I was there until May 1943,
I was released for an indefinite
period. I was still interested in An
Fascist and in July 1943, I again
... Communist Compa

RB.

Justin G. Cap

DECLASSIFIED
Authority NND 785074
By NARA, Date

Rome. my area was in the Center of Rome and I was the person in Command. I held the position until 15th november 1943, when I became involved in the GAP, which means Gruppo Azione ~~Patriotica~~ Patriotica, a part of the Communist Party, and was the Commander of the "Pisacane Squadr
On 22nd January 1944, when the All landed at Anzio I was sent to Centocelle in charge of the Partisan there. In March I was recalled Rome and again took up my previous Command, and have been here ever s
In may, 1944, I was sent out of Rome in charge of the Partisan between Rome and the Cassino fro

M G Capt

DECLASSIFIED
Authority NND 785047
By NARA, Date

was on my return to Cassino from R.B. when I was ob
by Fascist troops near the Pe t
Mammolo about 10 kilometers
outside of Rome on Via Tiburti
and owing to the fighting I ret
to Rome, and took up service
my patriots in the San Lorenzo
district. On the morning of 5th Ju
1944, I was sent to guard the
building of the Unità newspa
in Via 4th November, ~~1944~~ Nov. 4 RB Rome,
Via Le Cannelle. I arrived there
about 10:30 am. at about 3 pm
I walked into Via Le Cannelle o
a tour of inspection and saw
men, one in civilian clothes and o
in uniform, who was carrying

Capt

DECLASSIFIED
NND 785014
By NARA, Date

tearing down posters from the wall near the steps leading from Via Tre Cannelle to Via 24th May, including posters of the Unità newspaper. I was with a friend named Carla Cattoni, a lady, who lives in Via del Foro Traiano, 1, Rome. Carla and I went up to men and I asked them why they were tearing down the posters. The man in uniform answered arrogantly, "I can do as I please. Who are you?" I replied, "I am a member of the Committee of Liberation" and showed him my armband, which I was wearing on my left arm. The one I hand you is the one I was wearing. At this moment the man in uniform pulled his revolver from the back of him pulled a cartridge in the second

Milan Gaff

R B

DECLASSIFIED
NND 785024
By NARA, Date

struck the revolver in my body near the heart. I had my right hand in my trousers pocket, holding a loaded "Barretta" pistol, calibre 9 mm. (short). At the time the uniformed man put the pistol to my body, the man in civilian clothes fired two shots. I thought they were at me. I was not struck by them. I stepped back a few paces, drew out my pistol and fired three shots at the uniformed man. I thought all shots struck him in the body. The uniformed man then fell to the ground. The man in civilian clothes then ran away. I cannot remember which way he went. As I saw the man on the ground I then noticed he was a lieutenant of the guardia finanza. my girl friend was present.

Yusuf Sam

RB

DECLASSIFIED
NND 785024
By NARA, Date

and she saw all that happened. There were people also at the windows of surrounding houses. I did not know the informed man or the man in civilian clothes. The girl and I kept the public back. Shortly afterwards a man, who I would know again wearing a white armband red, white and green in colour with "Police" on it, came up and asked ~~him~~ me RB what happened. I told him and he asked me for my name and documents. I showed him the Identity Card and military license and told him they were false. However, I gave the man my real name and address. I remained there for about ~~five or ten~~ twenty RB minutes, and returned to the Unità building with the girl, Carla, and the man who had taken particulars from, and he verified my identity. I left Rome on ~~9th~~ RB

Statement

DECLASSIFIED
NND 785024
By NARA Date

8

June 1944 and went to the Viterbo District. I stayed there until 19th June 1944, doing Communist work, and then returned to Rome. I hand you the false identity card and military licence. I gave my pistol, as a present, to an Australian Lieutenant who called at the Unità offices on 6th June 1944. I think his name was "PETTER". He was with the Fifth Army. They all know him at the Unità office. I last saw him about 19th June 1944. Carla had a pistol on her at the time. I do not know whether she still has it or not. I shot the Lieutenant because he had held his pistol to my body. At that

Fabio Cari

RB

106

DECLASSIFIED
NND 785024
By NARA, Date

I thought the Lieutenant was going to shoot me because he appeared very aggressive. At the moment I thought he was a Fascist, but I have since been told he was a patriot so I am sorry that it happened. Carla had nothing to do with the shooting. I carried the false identity cards and military licence because the Fascists were looking for me because of my Anti-Fascist activities and for no other reason. I have a good character. This statement has been read to me in Italian by Cpl Conti, 267th Regiment, Coy "F" and it is the truth. Rosario Bartolotta

Witness: Wm Greenhill. Capt.
22/6/44

DECLASSIFIED
NND 785074
By NARA, Date

220

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A.M.G. H.Q.
Piazza Venezia

25th June, 1944.

Statement of Carla CAPPONI, aged 24 years, single, of Foro Traino, 1, Flat No. 12, Rome, who says:-

I live with my mother at the above address. My father died four years ago. I have not been employed since last December because the Fascists and Germans were looking for me.

For the past seven months I have been a Communist and anti-fascist. I fact, I have always been anti-fascist.

I have known Rosario Bentivegna, who lives in Via Torino, Rome, for the past year. He has, so far as I am aware, always been anti-fascist and connected with the communist party. I am engaged to Bentivegna, but not officially because I have not known him long enough.

At about 2 p.m. on 5th June, 1944, I was at the offices of the Unita' newspaper a Communist organ, in Via 4 Novembre, Rome, when I was asked to remain and help to guard the building because we were afraid that Fascist elements might enter the place. Rosario Bentivegna was there in charge of the Guard.

At about 3 p.m. that day, Rosario, asked me to accompany him on a walk round the building. I agreed to. Rosario had a revolver in his right trouser pocket, but I was not armed. The two of us walked into Via Tre Cannelle, nearby, and when we turned into the street, I saw a man in Army uniform, with his coat over his left arm. I do not recollect whether he had a hat on. With him was a man in plain clothes. The man in uniform, I did not know what arm of the Italian services he belonged, was pulling down "patriot" posters, including those of the Unita' newspaper from the wall near where the steps lead up to Via 24 Maggio. I do not know whether the man in Civilian clothes was with the uniformed man, but I formed the impression he was. Rosario and I went up to the two men. Rosario asked the uniformed man to stop pulling down the poster and asked why he was doing it. The uniformed man replied "who are you to ask me questions". Rosario was wearing a "national Liberation" arm band on his left arm. Rosario pointed to his arm band and said " I am in charge of the Unita' newspaper guard, and told the man what the arm band stood for. Please come to my office and explain the reason". Both became very excited and shouted at each other. With that the uniformed man took a revolver from his holster, charged the revolver with a cartridge and stuck it at the left side of Rosario. No words passed at that moment between the uniformed man and Rosario.

The other man who was in civilian clothes stood at the back of the uniformed man. I stepped aside having seen the man in civilian clothes who was standing 4 or 5 meters away draw a revolver from his right hand trouser pocket. At the same time I called out "Attention" and moved quickly over to the wall opposite because I thought this man was going to fire. A few seconds I saw Rosario took a step back from the uniformed man and fire three shots at the uniformed man. Almost at the same time the man in civilian clothes fired two shots. I don't know whether he fired at us or in the airm but I had the feeling that one shot passed close to me. I then saw the uniformed man spin round and fall to the ground on his back. In the death spasms the uniformed

DECLASSIFIED NND 785014 By NARA, Date

dropped his revolver by his head. At that moment the civilian ran away in the direction of Via Nazionale. With that a man in civilian clothes wearing a police arm band came on the scene from the direction of Via 4 Novembre. He told Rosario that he had seen everything and asked Rosario for his name and address and other particulars. Rosario produced an identity card and said "this is false". Rosario still held the revoler in his hand. However Rosario did give the policeman his proper name and address. The policeman lifted the dead man's coat and then said that the dead man was a Lieutenant of the Guardie di Finanze. A crowd began to gather and persons from the Unita' newspaper were coming to the spot. Rosario told the latter persons to return to the Unita' building.

One of these men, I don't know his name, but they would know it at the Newspaper's office, handed me a revolver and I helped to keep the crowd back. At that time members of the Guardie di Finanze arrived on the scene. I recognised them as such because of their headware. They then took charge and Rosario and I went with the policeman to the "Unita'" newspaper office. I then handed the revolver I had back to the man who had given it to me. A man at the newspaper offices vouched for us to the policeman.

I cannot help you as to the whereabouts of the dead man's revolver because I looked away on the occasion to keep the crowd back and upon looking again at the dead body I saw that the revolver had siappeared. I asked the policeman and later the Guardie di Finanze whether they had picked up and they all replied "no".

I had no hand in the shooting of the Tenente of the Guardie di Finanze, neither did I, at any time, urge Rosario to fire at him. I was more or less an innocent bystander. I had never seen the dead man or the other civilian before in my life. I do not know even now the identity of the civilian.

This statement has been read to me in Italian by Gabriella Barbati and it is the truth.

Carla CAPPONI

T.W.M. Greenhill, Capt.

25.6.44.

222

324 bis

Exhibit 3
H. L. Leitner
Colonel

ASSR

DECLASSIFIED
NND 785014
By NARA, Date

Judgment.

The Court desires to say at the outset that in arriving at its decision in this case it has not been affected one way or the other by any political considerations. It makes no difference in the mind of the Court that the accused happened to be a member of any political party or that the posters, the tearing down of which was the original cause of the unhappy events which followed, were those of any particular political party or organ. The deceased man was a human being & the accused is to be judged by this Court as a human being.

It has already been stated in this Court that unless the Court is satisfied beyond reasonable doubt that the accused is guilty he must be acquitted. In the present case there is no doubt that the accused killed the deceased: he himself has admitted it. The only question which remains, therefore, is whether in the particular circumstances the killing of the deceased was a lawful or an unlawful act. The accused claims that it was a lawful act on the ground that he was acting in his own defence & he invokes Art 52 of the Italian P.C.

In assessing the validity of this claim by the accused, the Court must be guided solely by the evidence given during this trial. This evidence has been extremely lengthy & voluminous & the Court has attended very carefully to the whole of it. As has already been pointed out, there has been considerable conflict of testimony between the various witnesses with regard to many details of greater or lesser importance. The Court does not propose to set out here in detail its judgment on the accuracy or otherwise of each witness. Having heard all and weighed

DECLASSIFIED NND 785034 By NARA, Date

the evidence, it has been possible to form a fairly clear view of the main incidents of what happened. The Court is satisfied that the accused, seeing the deceased leaving down the porters, addressed him in an arrogant & hostile manner: that the deceased replied in an equally hostile manner; pulled out his pistol & pointed it at the accused: that accused thereupon, without waiting, pulled out his own pistol in turn & shot the deceased. In the view of the Court, this is a case in which two excitable & impulsive young men lost their tempers & resorted precipitately & unnecessarily to ~~extreme~~ the use of firearms.

It remains, therefore, to consider the legal consequences of these events, and action taken by two parties. In doing this we do not forget that the events took place on the 5th June – a day, doubtless, when the atmosphere was fraught with electricity & feelings ran high.

Allowing for this, the Court is satisfied that the action of the deceased in drawing his pistol was ~~quite~~ unwarranted & amounted ~~to an insult: a "fatto ingiusto" within art 52 (2) & to an "offesa ingiusta" with art. 52 of the P.C.~~ Having said this, however, the Court is equally satisfied that the re-action of the accused was also unwarranted and ~~exceeded~~ the bounds of defence proportionate to the ~~the "offesa". As was said by the Prosecuting~~ Officer, when confronted by the pistol of the deceased, the accused had other means of dealing with the situation without shooting to kill straight away. It does not ~~a~~ in the least follow that, because the deceased drew his pistol, he had any intention of shooting. There is no evidence to show that he had any such intention & ~~the~~

DECLASSIFIED NND 765024 By NARA, Date

and no witness has suggested that any words were spoken to show that the deceased had any such intention. In any case, it is clear that a number of other courses were open to the accused beside the extreme course which he took.

In these circumstances, the Court rules ~~Concludes~~ (i) that the defence put forward under Art 52 of the P.C. has not been fully made out: & (ii) that ~~In the view of the Co~~ the accused ~~that~~ did not ~~comm~~ act under any such error as is envisaged in the last paragraph of Art 59.

Therefore, the case falls to be dealt with under Art 55 and as such is punishable under Art 589.

At the conclusion of the ~~argument~~ evidence, it was admitted by the prosecution that there was no evidence of aggravating circumstances as alleged in the charge sheet. The Court has, therefore, to consider only whether there are any extenuating circumstances under Art 62 of the Italian Penal Code. On all the evidence, the Court rules that the accused is entitled to the benefit of the extenuating circumstances specified in Art 62 (2). ~~the CP.~~

In relation to this point, it has been pointed out to the Court that conflicting opinions have been expressed by high judicial authority in Italy as to whether an accused who is found guilty under Art 55 can properly claim the benefit of Art 62 (2): but the Court decides that in view of this conflict of opinions any doubt must, be in this case, be resolved in favour of the accused.

For the above reasons, the Court finds the accused guilty not of the offence charged

DECLASSIFIED
NND 785014
By NARA, Date

in the charge sheet (namely arts 575 & 61 (1c) of the P.C.) but of the lesser offence contemplated by art 55 punishable in accordance with art. 589 with the benefit of art 62 (2).

If the Defence desires that, before imposing sentence, the Court should take into consideration other extenuating circumstances or wishes to make any observations on the ~~proper~~ sentence to be imposed on the basis of the above rulings, the Court will be pleased to hear their submissions. But, before hearing any such submissions by the defence, ~~the Court must~~ the Prosecutor if he has any evidence of previous convictions to adduce.

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DECLASSIFIED
Authority NND 785027
By NARA, Date

Decisione

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata né dall'uno né dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati, originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.

La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato ha ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applidazione dell'art.52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentamente in considerazione. Come è già stato messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possibile formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto. 93

REGION IV CASE N° 7762

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DECLASSIFIED NND 785034 By NARA, Date

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una "offesa ingiusta" secondo l'art. 52 del Codice Penale. Posto ciò, la Corte è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colpevolmente i limiti della difesa proporzionata all' offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.

In tali circostanze, la Corte decide:

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

98

2) che l'imputato non ha agito sotto qualsiasi errore come contemplato

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DECLASSIFIED NND 785024 By NARA, Date

dall'ultimo paragrafo dell'art. 59.
Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punibile secondo l'art.589.
Alla conclusione delle prove,il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti,come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostenze attenuanti previste dall'art.62 del Codice Penale Italiano.
In base alle prove,la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art. 62, comma 2. In relazione a detto punto,è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art.62 comma 2: ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato.
Per le ragioni summenzionate,la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè;art.575 e 61 N° 10 del C.P.I.) ma del minore reato contemplato nell'art.55,punibile in relazione all'art.589,col beneficio dell'art. 62 N° 2).
Se la difesa desidera che,prima di emettere la sentenza,la Cortedebba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate,la Corte è pronta ad ascoltare tali argomenti. Ma,prima di udire tali argomenti della difesa,la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne. dell'imputato.

DECLASSIFIED
NND 785014
By NARA Date

MEMORANDUM
for
ROSARIO BENTIVEGNA
INCIDENT OF THE 5th JUNE 1944.

On the 5th June, at about 3 o'clock in the afternoon, Rosario Bentivegna, accompanied by the student Miss Carla Capponi, while on guard outside the building of the newspaper "Unità", in Via Quattro Novembre, and wearing the three-colour arm band of the committee of National Liberation, ~~he~~ met a soldier at the entrance to Via Tre Cannelle, without his military cap and carrying his jacket on his arm, who was impetuously tearing down the advertisements of the newspaper "L'Unità", and also other advertisements relating to the liberation of Rome and free Italy.

Bentivegna told the soldier to halt, but the latter disdainfully turned on him demanding him what right he had to interfere. So Bentivegna showed his three-coloured arm-band of the Committee of National Liberation and he stated himself to be a "volunteer of liberty" on guard for the newspaper, and he invited the soldier to follow him to the newspaper's offices.

But the soldier, instead of accepting the invitation, drew out his revolver, loaded it, and pointed it at Bentivegna.

At that moment, a man in civil clothes, who was beside the soldier in the moment the latter was stopped by Bentivegna, and who was at the same distance from him, on seeing the soldier point his revolver at Bentivegna, shot several times in the direction of the group. In the same instant, Bentivegna, realising that he was seriously threatened by the soldier, stepped back and drawing his own pistol rapidly shot three times at the soldier, who immediately fell to the

DECLASSIFIED
NND 785074
By NARA, Date

ground and died ~~immediately~~ shortly after.

Some minutes later a police agent arrived, to whom Bentivegna immediately raccounted the facts of the incident, also giving his own exact generalities, despite the fact that at that moment he was without identity documents, only possessing several false ones which he had used in order to hide from the Nazi-Fascist police who had been looking for him during the nine months of German occupation in Rome. It is worth noting that the Nazi-Fascist authorities had placed a reward of one million and a half ~~for~~ on the head of Bentivegna.

Afterwards it was learnt that the dead soldier was a Lieutenant of the "Guardia di Finanza" by the name of Barbarisi, whom Bentivegna had never seen before that occasion.

From statements made by certain companions who spontaneously presented themselves to the "Unità", it was at first believed that Barbarisi was a well-known Fascist spy who had taken part in various ~~execution~~ firing-squads for the execution of Italian patriots, but later it was found out that this identification of Barbarisi was ~~false~~ incorrect, and it appears that the idea had been taken from an Allied Radio communication from Anzio which had given indication, before the liberation of Rome, about a certain individual with a name similar to Barbarisi, a well-known and dangerous spy.

That the incident occurred in the way described above can be proved:—

1) from the statements of Rosario Bentivegna who for his qualities of character and education is absolutely to be relied upon. This is shown also by the attitude of Bentivegna who, instead of trying to avoid to avoid interrogation put himself at the disposal of the

DECLASSIFIED
Authority NND 785014
By NARA, Date

Authorities, giving as soon as possible his real identity, which he would easily ~~be~~ have been able to conceal, and afterwards presenting himself spontaneously to the Allied police authorities to supply all necessary explanations.

2.) From statements made by witnesses:— Miss Carla Capponi, who accompanied Bentivegna and who was present at the development of the episode. Miss Capponi is a completely reliable witness for reason of her high moral qualities.

3.) From a written statement, adjoined to the deed here forwarded, made by N.D. Isabella Galletti, who, while in her own home reading a book, heard some voices quarelling down below in Piazzetta delle Tre Cannelle; going to the window she saw two men, one dressed as a soldier and the other wearing the patriotic arm-band, who were having a heated argument, and then she saw that the soldier had pointed his revolver at the other's chest: then she heard some explosions, but being frightened she left the window, and when she looked out again she saw that the soldier was lying on the ground.

Mrs. Galletti also states that she noticed the advertisements of the newspaper "L'Unità" had been torn down and that the soldier was not wearing either his military cap or jacket which he was carrying on his arm.

4.) Other witnesses who can fully explain the circumstances of the fact and whose audition was verbally asked for by Bentivegna's defender, Avv. Corrado Penna, to the officer of Allied police who proceeded to the ~~eng~~ carrying out of enquiries and interrogations, are: 1) Italo De Tuddo, son of Amelio, aged 28, resident in Via Flaminia 19, Rome, who

DECLASSIFIED
NND 785027
By NARA, Date

was present at the incident until the moment that Barbarisi had drawn his revolver and loaded it, after which he went away on his bicycle being frightened of being hit by a badly-aimed shot;
2) Mr. Domenico Musu and his wife, Via Orazio 31, Rome: the Musu couple, going up the steps of Via delle Cordonate, saw the soldier accompanied by a civilian, tearing down the advertisements; immediately afterwards they saw a young man arrive, who reproached Barbarisi; they then saw Barbarisi draw his revolver from its case and with this, threaten the young man who was coming towards him.

The defending party could indicate other witnesses able to describe the circumstances of the fact, but he reserves these in case of necessity.

Having learnt the facts of the case it is obvious that no responsibility exists against Bentivegna, who acted for legitimate defence. In fact, one is dealing with a typical case of legitimate defence, in which anybody who might have been in Bentivegna's place would have acted in the same way.

Added to this Bentivegna, on the 5th June at 3. o'clock p.m. could be and had to be legitimately armed as, not only had the proclamation imposing consignment of arms and dissolution of armed squadrons of the various Parties not yet been issued, but armed groups of single parties had been charged with duties of public order.

93

DECLASSIFIED
NND 785024
By NARA Date

ROSARIO BENTIVEGNA'S PERSONALITY.

We will not hesitate to define Rosario Bentivegna as a heroic fighter in the war of Italian-national liberation, because his contribution to the struggle against the Nazi-Fascists, in Rome and its vicinity, is really conspicuous – even exceptional.

Bentivegna, medical student of the 5th year, after the 8th September 1943, felt that above every other personal interest was his only duty of the moment to fight against the German oppressors and their Fascist accomplices.

He always showed in his activity of partisan, as a member of the Groups of Patriotic Action, of volunteer for liberty, mental and spiritual gifts completely above praise.

Here are some of Bentivegna's most important actions:-

In his activity of partisan, in May 1944, he organised at Palestrina armed groups to serve in the fight against the Germans, he destroyed the enrollment lists at the Municipio of Palestrina, organised several armed actions against groups of Germans (in all six actions), in which besides killing various Germans and capturing 28 prisoners, who succeeded later in escaping owing to the imminence of the entry of allied troops in Rome, he and several other companions having left the place where the prisoners were, took away from the enemy two Radio transmitting and receiving sets, two Diesel motors, food supplies for 500 persons to last for five days.

In his activity as a member of a group of patriotic action in Rome, amongst other things he carried out the following truly exceptional deeds:-

He damaged a German lorry in front of the Royal Opera House,

DECLASSIFIED NND 785074

together with his group he organised an ambush and killed a German in Via XXIII Marzo; he carried out a bomb dropping in Piazza Barberini; ~~and~~ an attack against S.S. troops outside Regina Coeli prison; an attack against the German Command in Corso d'Italia; a night attack on Via Casilina destroying a German lorry, another night attack on Via Tiburtina destroying another German lorry, another attack against a group of Germans on Via Prenestina damaging a lorry; he destroyed a German telephone switchboard; he destroyed a German lorry at Muro Torto; he made an attempt on the life of Pizzirani, head of the republican fascists in Rome; together with his group he killed three fascists (~~they had~~ these fascists had killed a woman, who had gone to the Caserma (the 81st Infantry in Viale Giulio Cesare, to protest that her son had been taken away); he carried out the attack against the fascist column that was going up Via Tomacelli; he set fire to a lorry ~~full~~ loaded with petrol in Via Claudia (he destroyed another German lorry in Via Cavour); he ~~[illegible]~~ took part personally in the attack against the German column of S.S. in Via Rasella, in which 32 Germans were killed and more than ten others were wounded.

Bentivegna can assume full responsibility of these actions, the larger part of which were communicated by the clandestine newspapers "Tempo" and particularly "Unità", and the Italian Communist party approves them unconditionally as real and true acts of war against the Nazi-Fascists. The same must be said also about the ambush of Via Rasella, that Bentivegna accomplished with absolute disregard of the danger he was exposed to against a column of armed S.S. in full war order.

DECLASSIFIED
NND 785024
By NARA, Date

236

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Owing to the exceptional personality of Bentivegna and all the modalities of the tragic incident in which Lt. Barbanti was to meet with his death, we are confident in an early ~~realt~~ release of Bentivegna from prison.

Roma. 5 July 1944.

90

ACC 10400/142/197 [2 of 2] Legal Cases 7762
[June - Aug. 1944?];
[Folder, Data, No Dates]; [1943 - 1947]

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DECLASSIFIED
NND 785024
By NARA, Date

Rec'd July 10/44

Advanced Headquarters Allied Control Commission

July 8, 1944.

MEMORANDUM TO: Lt. Colonel John Pollock,
Rome Area Command.

The Secretary of the Communist Party in Italy has submitted the attached Memorandum with regard to the arrest of Rosario Bentivegna. It would be appreciated if I could be informed of the present status of this case in order that I may be in a position to reply to the communication from the Communist Party asking for further consideration of the case.

Samuel Reber

Samuel Reber
Vice President Allied Control Commission
Political Section

Chief Legal Office
(thro' Capt Ercumbill)

1) I discussed the case with Mr Reber and told him every possible facility will be extended to the accused & his counsel or advocate

2) ~~to~~ Also that the defence will be accorded every help in preparing their case by Legal Section Trial Court.

J. Pollock Lt Col.

8/7

DECLASSIFIED
NND 785074
By NARA, Date

PROMEMORIA per

ROSARIO BENTIVEGNA

INCIDENTE DEL 5 GIUGNO 1944.

Il giorno 5 giugno 1944, verso le ore 15, Rosario Bentivegna accompagnato dalla studentessa Carla Capponi, mentre prestava servizio di vigilanza nei pressi del giornale "L'Unità", a Via 4 Novembre, e recava sul braccio la fascia tricolore del Comitato di Liberazione Nazionale, incontrava presso l'imboccatura della Via Tre Cannelle un militare, senza berretto e che portava la giacca sul braccio, che andava strappando con impeto alcuni manifesti del giornale "L'Unità", nonchè altri manifesti inneggianti alla liberazione di Roma e all'Italia libera.

Il Bentivegna intimò l'alt al militare, il quale, con aria sprezzante lo investì domandandogli con quale diritto egli intervenisse. Allora il Bentivegna mostrò il bracciale tricolore del Comitato di Liberazione Nazionale e si qualificò per "volontario della libertà", di guardia al giornale, ed invitò il militare a seguirlo alla sede del giornale.

Ma il militare, anzichè ottemperare all'invito, estraeva la rivoltella, metteva un colpo in canna e la puntava al petto del Bentivegna.

In quella, un uomo in abito civile, che era accanto al militare nel momento in cui questi fu fermato dal Bentivegna, e che era alquanto distante da lui, mentre il militare faceva il gesto di puntare la rivoltella contro il Bentivegna, sparò alcuni colpi in direzione del gruppo. Nello stesso

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REGION IV CASE Nº 7762

DECLASSIFIED
NND 785014
By NARA, Date

istante il Bentivegna, sentendosi minacciato così gravemente dal militare, fece un passo indietro, e, estratta la propria pistola tirò fulmineamente tre colpi contro il militare, il quale cadde immediatamente a terra, e decedette poco dopo.

Qualche minuto dopo accorse un agente di polizia in borghese, al quale il Bentivegna, immediatamente, riferì le circostanze dell'accaduto, e dette le proprie esatte generalità, nonostante che in quel momento egli fosse sprovvisto di documenti di identità, possedendone alcuni falsi che gli erano serviti per sottrarsi alle ricerche della polizia nazi-fascista durante i nove mesi dell'occupazione tedesca di Roma. E' da notare che le autorità nazi fasciste avevano posto sul capo del Bentivegna una taglia di un milione e mezzo.

Si è saputo poi che l'ucciso era un tenente della Guardia di Finanza, Barbarisi, che il Bentivegna non aveva mai veduto prima di quell'occasione.

Per dichiarazioni fatte da alcuni compagni che spontaneamente si presentarono al "L'Unità", si credette in un primo momento che il Barbarisi fosse una nota spia fascista, che aveva preso parte a vari plotoni di esecuzione contro patrioti italiani, ma successivamente si è chiarito che questa identificazione del Barbarisi era erronea, e pare che l'equivoco sia stato ingenerato da una comunicazione della radio alleata di Bari che aveva indicato, prima della liberazione di Roma, un individuo dal nome simile a Barbarisi, come nota e pericolosa spia.

87

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DECLASSIFIED
NND 785024
By NARA, Date

Che l'incidente si sia svolto nel modo sopra descritto è comprovato:

1°) dalle dichiarazioni di Bentivegna Rosario, che per le sue qualità di carattere, di educazione, è assolutamente credibile. E' comprovato altresì dal comportamento stesso del Bentivegna, il quale, anzichè sottrarsi alle indagini dell'autorità si mise a disposizione di questa, dando in un primo momento le sue vere generalità, che avrebbe invece potuto facilmente occultare, e in un secondo momento presentandosi spontaneamente all'autorità di polizia alleata per fornire tutti i chiarimenti opportuni.

2°) Dalle dichiarazioni fatte dalla teste, signorina Carla Capponi, la quale accompagnava il Bentivegna, e che fu presente allo svolgimento del fatto. La Capponi è teste assolutamente insospettabile, sia per le sue altee qualità morali, sia [illegible]

3°) Dalla dichiarazione scritta, allegata al processo inviata dalla N.D. Isabella Galletti, la quale mentre si trovava nella sua casa, intenta a leggere un libro udì voci di un alterco che si svolgeva nella sottostante Piazzetta delle Tre Cannelle; avvicinatasi alla finestra essa vide due uomini, di cui uno vestito da militare, e l'altro con il bracciale dei patrioti, che si scambiavano parole violente, e vide poi che il militare aveva puntato la rivoltella sul petto dell'altro; udì poi delle esplosioni, ma si ritirò impaurita dalla finestra, e quando si riaffacciò vide che il militare era stramazzato a terra.

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DECLASSIFIED
NND 785024
By NARA, Date

La signora Galletti afferma egualmente che ha notato che i manifesti del giornale "L'Unità" erano stati strappati, e che il militare non portava nè il berretto nè la giacca, che teneva sul braccio.

4º) Altri testi che possono chiarire in pieno le circostanze del fatto, e la cui audizione venne chiesta verbalmente, dall'difensore del Bentivegna, Avv. Corrado Perris, all'ufficiale della polizia alleata che ha proceduto all'inchiesta e agli interrogatori, sono: 1º) Italo De Tuddo, di Aurelio, di anni 28, residente in Roma Via Flaminia 19, che fu presente al fatto, sino al momento in cui il Barbarisi impugnata la rivoltella fece l'atto di mettere il colpo in canna, dopo di che egli si allontanò in bicicletta temendo di poter essere colpito da qualche colpo andato a vuoto; 2º) signor Musu Domenico, e miglie; ~~xxxxxxxxxxxx~~ Via Orazio 31, Roma: i coniugi Musu ~~xxxxxxxxxx~~ passando per le scale di Via delle Cordonate videro il militare, accompagnato da un borghese, che strappava i manifesti; subito dopo videro sopraggiungere un giovane, che rimproverò il Barbarisi; videro poi il Barbarisi trarre dalla fondina la rivoltella, e con questa minacciare il giovane che gli veniva incontro.

La difesa del Musu potrebbe indicare altri testi sulle circostanze del fatto, ma si riserva di addurli in caso di necessità.

85

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DECLASSIFIED NND 785034 By NARA, Date

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Così ricostruiti i fatti, non vi è dubbio che nella specie non sussista alcuna responsabilità ~~xxxx~~ da Bentivegna, il quale ha agito ~~xxxxxxxx~~ per legittima difesa. Si tratta, invero, di un caso tipico di legittima difesa, in cui chiunque si fosse trovato al posto del Bentivegna, avrebbe agito nello stesso modo.

A ciò si aggiunga che alle ore 3 del 5 giugno il Bentivegna poteva e doveva legittimamente ~~xxx~~ andare armato, in quanto , non solo non era stato emanato ancora il bando che imponeva la consegna delle armi, e che scioglieva le squadre armate dei vari Partiti, ma, i gruppi armati dei singoli partiti erano investiti di funzioni di ordine pubblico.

PERSONALITA' DI BENTIVEGNA ROSARIO

Non esitiamo a definire Bentivegna Rosario un combattente eroico della guerra di liberazione nazionale italiana, perchè il contributo che egli ha dato alla lotta contro i nazi-fascisti, a Roma e nelle vie cinanze di Roma, è veramente cospicuo, anzi eccezionale.

Il Bentivegna, studente in medicina del 5° anno, dopo l'8 settembre ha sentito che il suo dovere del momento attuale, al di sopra di qualsiasi interesse personale, era quello di lottare contro i tedeschi oppressori, e i loro manutengoli fascisti.

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DECLASSIFIED
NND 785014
By NARA, Date

Ha dimostrato sempre nella sua attività di partigiano, di componente dei Gruppi di Azione Patriottica, di volontario della libertà, doti di mente e di cuore assolutamente superiori a qualsiasi elogio.

Ecco, alcune delle più importanti azioni compiute dal Bentivegna:

Nella sua attività di partigiano, egli nel maggio del '44 organizzò a Palestrina bande armate che dirigeva nella lotta contro i tedeschi, distrusse le liste di leva al Municipio di Palestrina, operò più azioni armate contro gruppi di tedeschi, (in complesso sei azioni), in cui oltre ad uccidere vari tedeschi, appatturare 28 prigionieri, che riuscirono poi a fuggire nell'imminenza dell'entrata a Roma delle truppe alleate, avendo egli ed alcuni suoi compagni allontanatsi dal luogo dov'erano i detenuti, egli tolse al nemico due radio trasmittenti e riceventi, due motori Diesel, provviste alimentari per 500 persone per la durata di cinque giorni.

Nella sua attività di componente di un gruppo di azione patriottica a Roma, egli, fra l'altro compì le seguenti gesta, che sono veramente eccezionali:

danneggiò un camion tedesco innanzi al Teatro dell'Opera; insieme con il suo gruppo tese un'imboscata e uccise un tedesco in Via XXIII Marzo; eseguì un lancio di bombe a Piazza Barberini; eseguì un attacco alle truppe SS autotrasportate presso le carceri di Regina Coeli; eseguì l'attacco al comando germanico al Corso d'Italia; eseguì un attacco notturno sulla Via Casilina distruggendo un camion tedesco; eseguì un altro attacco notturno a Via Tiburtina distruggendo un altro camion tedesco; eseguì

83

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DECLASSIFIED NND 785024 By NARA, Date

un altro attacco a un gruppo tedesco, sulla Via Prenestina, danneggiando un camion; distrusse un centralino telefonico tedesco; distrusse un camion tedesco presso il Muro Torto; eseguì un attentato contro il Pizzirani, capo dei fascisti repubblicani di Roma; insieme con il suo gruppo giustiziò tre fascisti (che avevano ucciso una donna, che era andata a protestare per aver avuto razziato un figlio, al Viale Giulio Cesare, presso la caserma dell'ex fanteria; eseguì l'attacco alla colonna fascista che si muoveva per Via Tomacelli; incendiò un camion carico di benzina a Via Claudia (distrusse un altro camion tedesco a Via Cavour); eseguì personalmente l'attacco alla colonna tedesca di SS in Via Rasella, in cui trovarono la morte 32 tedeschi e furono feriti più di una diecina.

Di questa azioni del Bentivegna, la maggior parte delle quali è stata comunicata dai giornali clandestini del Tempo, ed in particolare dall'"unità", il Bentivegna può assumere la piena responsabilità, ed il Partito Comunista Italiano le approva incondizionamente come veri e propri atti di guerra compiuti contro i nazi-fascisti. Lo stesso deve dirsi anche dell'attentato a Via Rasella, che il Bentivegna ha compiuto con assoluto disprezzo del pericolo a cui si esponeva, contro una colonna di SS armata in pieno assetto di guerra.

82

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DECLASSIFIED
NND 785024
By NARA, Date

Data la personalità eccezionale del Bentivegna, e le modalità tutte del tragico incidente, in cui doveva trovar la morte il tenente Barbagisi, confidiamo in una sollecita scarcerazione di lui.

Roma, 5 luglio 1944

DECLASSIFIED
NND 785024
By NARA, Date

CASE OF BENTIVEGNA ROSARIO

According to the Italian law, the wilful homicide is punished by th-e article 575 of the Penal Code.

Under certain circumstances, which may be special or ordinary, the crime is considered more or less serious.

The special circumstances concerning the crime of homicide (indicated by the art. 576 and following ones) are not involved in this case, according to the charge.

The ordinary circumstances, aggravating or extenuating, are indicated by the articles 6I and 62.

ORDINARY AGGRAVATING CIRCUMSTANCES. The only aggravating circumstance mentioned by the charge is the one indicated by the art. 6I N°IO : having committed the act against a public Official or a person entrusted with a public service in the course or by reason of the performance of the functions or service.

The definition of the public Official and of the person entrusted with a pubblic service is provided by the articles 357 and 358. The former is the person who exercises a public legislative administrative or judicial function. The latter is the person who performs a public service.

The principal points are:

A) if the Barbarisi was a public Official or entrusted with a public service.

B) if the crime was committed against the Barbarisi in the course or by reason of the performance of his functions or service, as a public Official or a person entrusted with a public service.

If the answers are negative, the aggravating circumstance of the

DECLASSIFIED NND 785014 By NARA, Date

art.6I Nº IO does non exist.

ORDINARY EXTENUATING CIRCUMSTANCES. The extenuating circumstances which, hypothetically, might be concerned in this case are the following :

A) Art.62 Nº1 : having acted for motives which have a special moral or social value.

B) Art.62 Nº2 : having reacted when in a state of anger, caused by an injust act of an other person (provocation).

LEGITIMATE DEFENCE. A cause of exclusion of any punishment would be the legitimate defence (Art.52).

For the legitimate defence is required an actual danger of an injust injury. It is also required the necessity of the defence, so that the danger or the damage could non be avoided unless with the defence. Besides that, the offence must be proportioned to the injury.

When the fact is exceeding the limits of the law or of the necessity, it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imprisonment not inferior to 2I years (Art.575).

If there is an aggravating circumstance, the punishment which would be imposed for the committed crime is increased as far as a third. In no case, the period of imprisonment can exceed 30 years (Art.64).

If there is an extenuating circumstance the punishment is diminished of a period not exceeding a third (Art.65). Existing more than one extenuating circumstance, the punishment cannot be inferior to the fourth part (Art.67).

When there is a concourse of aggravating and extenuating circum-

DECLASSIFIED
Authority NND 785074
By NARA, Date

stances ,the Judges decide if are prevailing the one or the others, and will consider only the prevailing ones.They can also consider them equivalent,so that no augment or diminution will took place. (art. 69)

DECLASSIFIED
NND 785024
By NARA, Date

Udienza 17 luglio

John B. Sergeant
ASN 19072607
Tech/Sgt. A.S.
Army Air Force

La difesa ritiene che il Pubblico Accusatore non è riuscito a dimostrare l'illegittimità del fatto compiuto da Rosario Bentivegna, e la responsabilità dell'accusato. - Perciò potremmo pregare la Corte di emettere sin d'ora la Sua decisione. Ma noi vogliamo dare la prova completa, inequivoca, positiva dell'innocenza di Bentivegna Rosario.-

Ci proponiamo, pertanto, di provare:

1°) che il fatto è avvenuto in un'emergenza di guerra guerreggiata, che il Bentivegna, come tutti i patrioti italiani, secondo gli ordini e le disposizioni impartite dal Comitato di Liberazione Nazionale, attraverso le organizzazioni militari, collegate con il Comando Alleato, doveva essere in istato di allarme e di difesa;

2°) che Rosario Bentivegna, il 5 giugno, alle ore 3 pomeridiane, era volontario della libertà in attività di servizio, e che egli era stato incaricato di proteggere la sede del giornale "Unità" e le immediate adiacenze, contro eventuali attacchi od offese di elementi nazi-fascisti;

3°) che Rosario Bentivegna era autorizzato a portare le armi;

4°) che i Patrioti erano vincolati agli ordini ricevuti,

DECLASSIFIED
NND 785014
By NARA, Date

5°) Che il Tenente Barbarisi, e forse anche un'altra persona non individuata, con lo stracciare i manifesti patriottici che si trovavano nelle edicole infisse all'esterno del fabbricato dove ha sede "L'Unità" ha compiuto un fatto che è apparso obbiettivamente ostile ai patrioti del movimento italiano di liberazione ed agli stessi Alleati;

6°) Che la reazione verbale e l'intervento del Bentivegna erano quindi pienamente giustificati, dal punto di vista oggettivo e soggettivo.-

7°) Che il Barbarisi ha reagito a tale intervento in modo violento, prendendo per primo l'iniziativa di passare alle armi.-

8°) Che il Bentivegna non aveva altra possibilità di scampo al pericolo grave, attuale, immediato che minacciava la sua integrità fisica, che non in una reazione altrettanto rigida ed immediata.-

9°) Stabiliti così i fatti, la difesa intende dimostrare, che anche dal punto di vista psicologico, il doloroso episodio può esser spiegato solo come dovuto ad un gesto di naturale difesa, imposto dall'istinto di conservazione.-

10°) Pertanto la difesa vuol provare che secondo la legge italiana, il fatto non è punibile, perchè la reazione del Bentivegna è stata necessaria e propor-

DECLASSIFIED
NND 785021
By NARA, Date

zionata all'azione offensiva del Barbarisi, e che è applicabile nel caso in esame l'istituto della le - gittima difesa nei suoi vari aspetti, che esime da qualsiasi responsabilità.-

DECLASSIFIED
NND 785014
By NARA, Date

I N D E X

REPORTS AND STATEMENTS RE: DEATH OF LT. BARBARISI, GUARDIE DI FINANZA.

pages

Report . . . . . 1 to 4

Report of Dr. Fontana -p.m. of body . . . . . 5 to 6

Statement of CASTELLI Alberto -witness . . . . 7 to 8

Statement of RONCUBI Anna, witness . . . . . 9 -

Statement of PANETTA Giorgio, Agent Pub.Sic. . . 10-

Statement of LT. Pietro PASQUA -evidence re: cartridge cases 11-

Statement of BENTIVEGNA Rosario- assailant . . . 12 to 14

Statement of CAPPONI Carla -witness, present with assailant at the killing . . . . . 15 to 16

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DECLASSIFIED
NND 785024
By NARA, Date

H.Q. ROME REGION A.M.G.

3rd July, 1944.

To: Chief, Public Safety Division, H.Q. Piazza Venezia.

From: Capt. T.W.M. Greenhill.

Subject: Death of a Lieutenant of the Guardie di Finanza by shooting, and arrest of culprit.

1. Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia di Finanza, 2nd Company, Caserma Via Salaria, Rome.
Home Address: 195, Via salaria, Rome.

2. In consequence, I saw LT.COL. Carlo Perinetti, CC.RR., upon the matter, but he could not assist other than to inform me that the body was at the Guardie di Finanza Caserma, Via Regina Elena, Rome.

I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 3 p.m., 5th June, 1944, at Via Tre Cannelle, Rome.

He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Pathologic Anatomy, Rome University, who offered his services, free of charge.

At 2.45 p.m., the same day, Dr. Fontana carried out a post mortem examination of the chest of the dead man.

His report, with translation, is attached giving a widely informative account of the operation. His deductions shortly are:

a) Death occurred from 48 to 72 hours before the P.M.
b) Death occurred rapadily from acute aneamia resultant upon the passage of a bullet which passed through the left thorax, with partial injury to the Aorta and the hemothorax, having entered in a region of the Chest corresponding to 1st left intercostal space and passing in a slightly downward direction and leaving the back at the 5th intercostal space on the paravertebral line.

DECLASSIFIED NND 785024 By NARA, Date

c) Bull. of small calibre, probably not more than m.m.

c) Distance - shot fired - about 1 to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at Via Tre Cannelle was then visited. Immediately an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the assistance of Vice Brigadiere INSACCANEBBIA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. On 23rd June 1944, in consequence of information received, I learned that the assailant was a young man named Rosario BENTIVEGNA of 122 Via Torino, Rome. I instructed Guardia Panetta to effect the detention of this man and bring him to me at this H.Q. Further he was not to make reference to the word "assassinio".

8. At 2.30 p.m. the same day I saw Bentivegna in the office of the Public Safety Division, having been detained at about 1 p.m. in the Via Nazionale by Guardia Panetta.

9. I told the suspect who I was and that I was making enquiries into the death of Lieut. Barbarisi of the Guardie di Finanza, which took place at about 3 p.m. on 5th June 1944, death resulting from a shot in the left side of the chest. I then asked him whether he could help me in the matter. The suspect replied: "Yes Sir, I did it". I then cautioned him and he replied: "I want to tell you all about it". He then made a statement in writing, under caution. The statement is attached.

In short it is a complete admission that he fired three shots directly at the deceased Lieutenant, one of which brought about the death.

He gives as an explanation for his actions that being a communist he saw the Lieutenant in Via Tre Cannelle pulling down posters from the wall, amongst which were posters of the Unita' newspaper, a communist organ. He alleges that he remonstrated with the Lieutenant who thereupon was told not to interfere.

He says that the Lieutenant then drew a revolver, charged it with a cartridge and stuck it in his, Bentivegna's body near the heart.

He alleges that he had his right hand in his trouser's pocket holding a loaded Beretta pistol and that at that moment a man in civilian clothes fired two shots. He thought they were directed to him although he was not struck. Because of the shots he stepped back a few spaces, drew his revolver from

72

DECLASSIFIED
Authority NND 785024
By NARA, Date

his trouse pocket and fired three sh s at the Lieutenant. He goes so far as to admit that he thought all three bullets struck the officer.

10. He disclosed the name and address of a girl who was with him at the time of the shooting. She is Carla CAPPONI, aged 24 years, of 1 Foro Traiano. I saw her at this office on 25th June 1944, and obtained a statement, attached, from her. She bears out almost in detail the story told by Bentivegna. I am satisfied, however, that she cannot be cited as an accomplice in the shooting.

11. I also submit statements taken from Anna Roncubi, 15 Via Tre Cannelle and Alberto Castelli, 98E Via 20 Settembre. The former woman alleges she was a witness to the shooting, describes the assailant and the woman who was with the latter. Mr. Castelli, who arrived soon after the shooting, apart from describing the scene, as he saw it, outlines the conversation he had on the spot with a young man, who was holding a pistol in his hand and the fact that the young man admitted the killing. He also speaks of the young lady. Having in mind the statements of the accused and his girl friend, the aofrementioned two persons provide necessary corroboration in connecting the facts.

12. Bentivenga, who is Italian, and has lived his life, to date, in Rome, alleges that he was unaware that the Lieutenant was an officer of the Guardie di Finanza. It is difficult to believe him as the uniform of a Guardie di Finanza is generally known to the Italian people. The Force has all the powers of a Police body apart from being an Arm of the Italian Military Forces.

13. Three pistol cartridge cases of 9.m.m. guage were found at the scene of the crime by Lieutenant Pietro Pasqua of the Nucleo CC.RR. Ludovisi, Via Quintino Sella. They bear identical stamp markings at the base.

14. I have been unable, to date, to trace the whereabouts of the dead man's pistol. Bentivegna says he subsequently gave his pistol away to an Australian Lieutenant, who is yet unkown.

15. I am in the process of obtaining statements to give an account of the passage of the body from the scene of the crime to its subsequent interrment.

16. The charge or charges in this case must arise from the Italian Law. I am advised by Commissario Ernesto Rodriguez

358

DECLASSIFIED
Authority NND 785024
By NARA, Date

of the Cen al Questura, Via San Vitale who is a Graduate of Law, that there is such an offense as wilful murder, with alternative offences of manslaughter down to assault.

17. As against a plea of self defence, I would draw attention to the fact that nobody alleges, not even the prisoner, that the Lieutenant fired a shot. The prisoner admits that he stepped back a few paces before firing. Not one shot but three shots directly at the officer. I wonder whether it could be said that having stepped back a few paces, his obligation was to run away.

18. Another point in issue is the status of the Lieutenant at the time i.e. a member of the Guardie di Finanza and therefore on duty. This point is not yet clear. One must appreciate the unusual conditions existing on 5th June 1944, which has made the enquiry fraught with difficulties..

However, I am endeavouring to produce evidence showing that he was on duty. Statements will be submitted from time to time as they arise.

19. Respectufllly submitted for information of legal department.

T.W.M. Greenhill,
Captain
Public Safety Division,
Rome

In the field,
- 3.7.44.

Major Hendrickson, Senior Legal Officer
(thro' Col. Poletti)

Referred please

J. Pollock Lt Col.
Rome Regional P.S.O

3/7/44

DECLASSIFIED NND 785014 By NARA, Date

5

REPORT OF DR. FONTANA

CELIO MILITARY HOSPITAL-ROME

Dissection Room.

At the request of the Allied Military Government I have today, June 7th, 1944 at 2.45 p.m. made the partial autopsy of the body of Giorgio BARBARISI of whose identity nothing further is known.

Queries were made to me by Captain Greenhill of the A.M.G. in regard to:

1) Presumed date of death.

2) Presumed age of deceased.

3) Cause of death.

4) Kind of injuries inflicted and their direction.

5) Type of projectile used.

6) Distance from which shot was fired.

The body of a man of apparently 25 years of age, partially undressed, lies flat on its back on the table of the dissecting room.

On inspecting the corpse green marks of putrefaction are noted on the supra and infra clavicular regions and on the lower regions of the abdomen. There are putrefactive desquamations of large pieces of skin on the limbs and on the back of the body. Rigor mortis has ceased.

On the top part of the left half of the thorax at about 2 centimetres from the sternum, on the 1st intercostal space an oval wound of 8 x 12 mm. with large axis having a perpendicular direction and edges which are clean out, introflexed, ecchymotic and tattoed for a width of 3 mm. is noted. By testing it with a specillum it is seen that the wound penetrated the thoracic cavity.

On the back, in a position corresponding to the left paravertebral line and the 5th intercostal space there is another oval wound of 1 x 1.5 cm. with edges that are ragged, ecchymotic, out-bending and not tattoed. Also here the specillum confirms that the wound penetrated the thoracic cavity. No other traumatic injuries are found anywhere else on the body.

69

Upon/

DECLASSIFIED
NND 785074
By NARA, Date

Upon opening the thorax an abandant quantity of blood (about 2 litres) is revealed, part being liquid and part coagulated in large red clots.

The examination of the passage of the bullet shows that this made a sort of tunnel and that the following partswere affected.

The skin and subcutaneous tissue of the front paries of the thorax- the aponeurosis and left pectoralis majoris muscle, the muscles of the 1st intercostal space, the front part of the left parietal pleura, the upper anterior mediastinum, the arch of the aorta (concave surface) the upper back plarietal pleura, the muscles of the 5th intercostal space, the muscles of the back, the subcutaneous tissue and the skin of the left paravertebral region.

In answer to the queries made, it may be deducted from the above data that:

1) The death occurred from 48 to 72 hours ago.

2) The deceased appears to be 25 years old.

3) Death occurred rapidly owing to acute aneamia caused by a wound inflicted with a firearm with bore through the left half of the thorax with partial injury to the aorta and hemothorax.

The bullet entered in front in a region corresponding to the 1st left intercostal space and following a slightly oblique downard direction came out on a leval with the back section of the 5th intercostal space on the paravertebral line.

4) The bullet was of small calibre, probably of not more than 7 mm.

5) The distance from which the shot was fired was of about 1 to 1½ metres.

THE DISSECTOR
Dr. Mario Fontana
of the Institute of Pathologic Anatomy
at the R. University.

68

DECLASSIFIED
NND 785014
By NARA, Date

4

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..oma Vecchia

8th June, 1944.

Statement of CASTELLI, Alberto, aged 36, Via 20 Settembre, 98E, Rome, Lieutenant, Italian Navy, who says:

At about 2.30 p.m. 5th June, 1944, I was standing at the door of the Italian Patriots building in Via Filotta, 24, Rome, when I heard shots. Shortly afterwards a civilian, whom, I do not know, passed by me and said "A member of the Guardie di Finanza has been shot". I said "where", and the civilian, a man, replied "There" and indicated towards Via 4 Novembre. I then walked with one or two of the men standing with me towards Via 4 Novembre and when I reached the corner of Via 3 Cannelle, I saw a drowd gathered at the corner. I walked through the crowd and saw the body of man dressed in the clothes of a Lieutenant of the Guardie di Finanza. I did not know him. I was sure he was dead. The body was lying on its back with feet pointing across Via 3 Cannelle. The head was pointing towards the right pavement. I then saw two Guardie di Finanza, whom I do not know, who were passing to keep back the crowd. They did so. I then saw a man who was near the body with a revolver in his hand. A girl was with him and she had a revolver in her waist band. There was another man there who was wearing a "Patriotic" arm band. The man holding the pistol had a communist arm banc. Red with black marks stamped on it. The girl also had one. I asked the two men and woman what had happened and the man with the communist arm band said "I killed him in personal defence".

I repeated my question and the man replied "He was tearing down some communist notices. I asked him to stop and he drew his revolver and he tried to take my pistol away with that a Guardia di Finanza who was with him fired some shots, so I shot him". I asked who was present and the girl replied "I was". The girl then told me the same story as the communist had told me. She then pointed to the wall and said "You can see the notices are pulled down". I looked and saw some posters were torn, but did not see any torn paper on the ground. I did not look to see. I then asked the communist to give me his revolver, but he refused. I then asked him for personal documents but he could not produce any and stated the reason was because he was guarding the building of the Unita Newspaper. This building is on the corner of Via 3 Cannelle, and Via 4 Novembre. The man with the "Patrioti" armband was apparently on Police duty because the arm band had "Police" stamped on it. The "patriot" then said "I am waiting for my Captain to come to investigate the matter" with that a woman who was looking out of a window nearby, with a man, said "cover up the body, it is not a nice sight". I said "well throw something down" with that the woman or the man threw down a piece of linen and

67

DECLASSIFIED
NND 785021
By NARA, Date

and one of the bystanders picked it up and covered the body. I lifted the linen cover and noticed that the injured man was wearing on his left arm a white arm band with English words on it. I think it was "Civil Police".

I waited and later a man, in plain clothes, arrived on the scene. He was wearing on his left arm a "patriot" armband, and on his left lapel he was wearing the gold bars of a "captain" mounted on a light red background.

As he arrived the man with "patriot" armband said "Here is the Captain". I told the Captain the whole story, including the fact that the man and girld had not any documents to show who they were. With that I walked away.

The Lieutenant was not wearing his coat. His shirt sleeves were rolled up. His coat was lying on the front of his body as though he had been carrying it at the time on his arm. I did not see any revolver on him or lying on the ground near him.

I do not know who the Captain is or any of the other three.

I feel sure I could recognise the girl again and might identify the other three persons.

The communist was about 20 years of age, about 5ft. 7 or 8 ins., medium build, clean shaven, normal face, fairish complexion, black hair, dress: grey clothes, no hat.

The girl was short, medium build, dark brown hair, dress: red designed dress, tight at the waist.

I cannot give a description of the "Captain" or the "Patriot" man, but I might recognise them again.

This statement has been read to me in Italian by Silvano Palumbo and it is true.

(sgd) Alberto Castelli

Witness T.W.M. Greenhill, Capt.
CAP.

66

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ANNEXE 1.

Year 1944 10th June
in Via Tre Cannelle No.15,
Rome.

RONCUBI Anna, married Ricci, parents unknown, born at Copparo (Ferrara) on 15.2.1892, porter of house No.15 in Via Tre Cannelle, is before us, officers and agents of Judicial Police detailed with allied Military police, to be questioned regarding the murder of Sub.Lt. of Finance Guards BARBARISI. She declares as follows:

"On the 5th inst. at about 14.30 o'clock, I happened to be standing at the door of thehouse of which I am porter. I noticed a sub.lt. who had his coat over his left arm, and a man of whom I cannot describe the features, exchanging some words. Immediately after the man, height about 1.70 meters, slim, who was holding a pistol, fired at short range against the officer, wounding him mortally.

The murderere then turned to a woman: age about 20-25, height about 1.50 meters, slim, thin face, straight hair, and ordered her to make me close the house door, and to dispurse onlookers who had assembled. Being frightened, but wishing to see what was happening, I went up to the first floor and looked out of the window. Thus I was able to note that the murderer and his accomplice were still on the scene of the crime, quite near the body, talking to a man of about 50 to whom he was showing a document. The man who was talking to the murderer took out a piece of paper and a pencil, making notes:

In answer to question:
I was not able to notice if the murderer wore an armlet, nor if the woman was armed.

In answer to question:
After about two hours, the body, which had been covered with a sheet provided by Signora Verzini, had Finance Guards sentries placed by it, and at about 18 o'clock it was taken away by a small lorry belonging to Finance Guards.

In answer to question:
I have no more to say".

Read, confirmed and signed by:

Roncubi Anna

Insaccanebbia Francesco
Panetta Giorgio

DECLASSIFIED
NND 785024
By NARA, Date

10

MG. ACC.
Piazza Venezia
Rome.

27th June, 1944.

STATEMENT OF PANETTA GIORGIO, Agent of Public Safety, Questura Centrale, Via Genova, Rome, who says:

On 5th June at about 3 p.m. I was walking along the Via 4th November when my curiosity was attracted to a group of persons who were standing in a circle in the Via Tre Cannelle, apparently looking at something. I went up to the crowd and lying in a horizontal position on the ground I saw the apparently lifeless body of a Lieutenant of Guardie di Finanze.
I now know that the dead man was named BARBARISI Giorgio.

I noticed that the officer was wearing grey-green trousers, with yellow bands down the sides, a grey-green shirt and a belt with an empty revolver holster attached. Near the dead man, I saw his jacket and his service forage cap. He was readily recognised as a member of the Guardie di Finanza.

On 25th June, acting upon the instructions of Capt. Greenhill, AMG. HQ. Piazza Venezia, at about 1 p.m. I arrested a young man named BENCIVEGNA Rosario of Via Torino 122 in the Via Nazionale.

I took him to AMG. HQ. and handed him over to Capt. Greenhill.
Later that afternoon I was present when the young man made a written statement, under caution, to Capt. Greenhill, and I heard him admit that he was the person responsible for the shooting of Lieut. BARBARISI.

(sgd) PANETTA Giorgio

64

DECLASSIFIED
NND 785024
By NARA, Date

28

11

LEGIONE TERRITORIALE DEI CARABINIERI REALI
DI ROMA

NUCLEO LUDOVISI

18th June 1944

At 14,30 o'cl. on June 5th unknown persons killed Sub.Lt. Giorgio Barbarisi of Finance Guards, in via Tre Cannelle, with three pistol shots.
Three shells were picked up at the place.
This Command has not made further enquiries as the matter was passed on to the Questura.
The shells were picked up personally by undersigned, who was immediately sent to the spot.

Il Tenente Comandante
PIETRO PASQUA

DECLASSIFIED
NND 785014
By NARA, Date

HOME REGIME
ALLIED CONTROL COMMISSION
G.S.I. No.394, H.Q. ARMY
Police Headquarters

24th June,1944.

SUBJECT: Murder of Lieutenant of Finance Guards named Giorgio CALDERONI.

TO : Col. C. POLETTI, Rome.

copies to: General Johnson
Colonel Ames
Major Fielden
Major Hendrickson.

OK
[illegible]
C. Poletti

1. About 3 P.M. 5th June,1944 (the day of our occupation of the City) a police Finance Guard, Lieutenant, was shot dead at Via Tre Cannelle, Rome. He was shot in broad daylight through the chest with one bullet, and died almost immediately. There was no clue as to the assailant.

2. Immediate instructions were given to the Questore to proceed with the enquiries in the ordinary way, but I felt the crime was such that immediate investigation was necessary by our Public Safety Division. As you know we had to disarm the overnight partisan police force of 17.000 upwards, and I felt that unless we stamped out this shooting by civilians ruthlessly the position might very soon become out of hand. Moreover, it came to my knowledge from reliable sources that many of the so-called communists and socialists were banding together to wipe up old scores with their fascist and other enemies. In short they were prepared to take the law into their own hands. The same afternoon I saw all the leaders of the various political groups, and warned them in no uncertain terms that we would tolerate no shoting or extreme measures by civilians in this city. They denied that any political parties were involved in the shooting of the Finance Guard, and they were unable to help me in the investigations.

3. I at once withdrew one of my officers from his District of Roma Vecchia, Capt. T.P.M. GREENHILL (B), who served with me as a detective officer, attached to the Criminal Investigation Branch, New Scotland Yard, London. Knowing his record I felt he was the one man who could handle this murder case. Capt. Greenhill at once took up the enquiries and from 6th June until last night he has been on this case day and night. By a process of elimination he has interviewed well over 200 individuals, dealt with over 100 suspects, and during the last three days narrowed the enquiries down to three or four suspects.

4. By 3 p.m. yesterday, 23rd June,1944, he had obtained sufficient evidence to arrest one Rosario BONIVENTO, age 22, medical student, of Via Torino 122, Rome, an avowed member of the

62

REGION IV CASE N° 7762

DECLASSIFIED NND 765081 By NARA, Date

Communist Party and self-styled partisan.

5. I was present when Capt. Greenhill handled this individual. Bentivegna was properly cautioned and agreed to make a written statement to Capt. Greenhill. In this written statement to Capt. Greenhill, Bentivegna confessed to the shooting of the Finance Guard, his excuse being that the Finance Guard Lieutenant had attempted to pull down certain wall posters including a poster respecting the "Unita'" newspaper, which is the communist organ. The evidence is clear, the confessions is straight forward, and there is no doubt the evidence will show that Bentivegna shot the Finance Guard in cold blood.

6. In the ordinary way such cases could be tried by the Italian Courts by Italian Judges, but I submit that this case is so serious, the polticial issues involved are so great, that we set up a strong Allied Military Court immediately to deal with this alleged murder. This course, I submit, is highly desirable because of the possibility, in the event of it being tried by an Italian Court, of the influences from political ramifications. Left in our hands, it could not then be said, by opposition parties, that political influence had had any effect upon the result.

7. Capt. Greenhill is having all the statements of witnesses etc. typed out, and will have the case ready for presentation within two days.

8. I strongly recommend that a General Court be set up with General Johnson, Colonel Poletti, and the Senior Civilian Judge of the City to hear the case, that the widest possible publicity be given to the trial so that we can stamp out once and for all such actions of violence on the part of civilians.

9. Fortunately this is the only known case of its kind so we have been very fortunate indeed, but an example must be made at once of this individual if found guilty.

J.R. POLLOCK
Lt. Colonel
Chief, Public Safety,
Rome.

61

DECLASSIFIED
NND 765024
By NARA, Date

31

ALLIED MILITARY GOVERNMENT

HEADQUARTERS
ROME REGION

20th June 1944

TO: :Chief Public Safety Division
FROM :Capt. T.W.M.GREENHILL
SUBJ : Death of Lt of Guardia Finanza

60

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NND 765014
By NARA, Date

ALLIED MILITARY GOVERNMENT

HEADQUARTERS

20th June 1944

TO : Chief, Public Safety Division
A.M.G. H.Q.
FROM : Capt. T.W.M.GREENHILL
SUBJECT : Death of Lieutenant of Guardia Finanza
REFERENCE
DATE : 20th June 1944

1; Acting upon your instructions, at 10 p.m. 6th June 1944, I took up the enquiry respecting the death, by shooting, of LT. Giorgio BARBARISI, Guardia Finanza, 2nd Company, Caserma, via Salaria, Rome.
Home Address : 195, via Salaria, Rome.

2. In consequence, I saw LT.Col. Carlo Perinetti, CC.RR.,upon the matter, but he could not assist other than to inform me that the body was at the Guardia Finanza Caserma, via Regina Elena, Rome.
I then learned from the Officer-in-Charge of the latter Caserma that the body had been removed to the Mortuary at the Ospedale del Celio, Piazza Celimontana, Rome, in preparation for burial, and that the death took place at about 3 p.m.,5th June 1944, at via Tre Cannelle, Rome. He was unable to advise me of any person who was a witness, or who had knowledge, of the occurrence.

3. Consequently, at 11.30 a.m., 7th June 1944, I visited the aforementioned hospital, saw the secretary, Major Raffaello Passalacqua, and outlined the known facts to him. I then viewed the body, noted the necessity of expert medical evidence, and sought the assistance of the Major to discover a Doctor capable of such testimony. He introduced me to Doctor Mario Fontana of the Institute of Pathologic Anatomy, Rome University, who offered his services, free of Charge. At 2,45 p.m., the same day, Dr.Fontana carried out a post mortem examination of the chest of the dead man.
His report, with translation, is attached giving a widely informative account of the operation. His deductions shortly are : 59

DECLASSIFIED NND 765034 By NARA, Date

A. Death occurred from 48 to 72 hours before the P.M.

B. Death occurred rapidly from acute Aneamia resultant upon the passage of a bullet which passed through the left half of the thorax, with partial injury to the Aorta and the hemothorax, having entered in a region of the Chest corresponding to 1st left intercostal space and passing in a slightly downward direction and leaving the back at the 5th intercostal space on the paravertebral line.

C. Bullet of small calibre, probably not more than 7.m.m.

D. Distance - shot fired - about 1 to 1½ metres.

4. It was obvious from the findings that the assailant must have been standing above the Lt. when discharging the fatal bullet, and at close range.

5. The scene of the crime at via Tre Cannelle was then visited. Immediatly an explanation presented itself to account for the direction of the bullet, because the roadway has a distinct upward slope to steps leading to via 24 Maggio.

6. At this juncture I obtained the assistance of Vice Brigadiere INSACCANEBBIA and Guardia PANETTA, both Agents of the Central Questura. To date, they have given invaluable service.

7. Although I have yet to trace a witness of the actual shooting, one has come to light who was on the scene soon after the happening. He is Mr. Alberto CASTELLI, via 20th September, 98 E Rome, a Lieutenant in the Italian Navy. He avers that at about 14,30 hours on 5th June 1944, he was standing at the door of via Pilotta 24, Rome, when he heard shots. He went to the corner of via Tre Cannelle, and upon pushing through a crowd of people in the street, he saw the Lieutenant lying across the roadway on his back, obviously lifeless. Near the body he saw a young man, whom he describes, with a revolver in his hand. He asked the man what had happened and he replied: "I killed him in personal defence", Mr.Castelli pressed him for further information, and the man added: " He was tearing down some communist notices. I asked him to stop and he drew his revolver and he tried to take my pistol away. With that a Guardia Finanza who was with him fired some shots, so I shot him".

DECLASSIFIED
Authority NND 785027
By NARA, Date

Mr. Castelli says he asked the man who else was present and a girl, whom he describes, standing nearby, replied that she had been. This girl apparently told the same story as the confessed assailant, and drew Mr.Castelli's attention to torn posters on the wall close at hand.

8. Several other witnesses have been interviewed but none can add to the story told by Mr.Castelli, although they could be used to support the latter's evidence.
Neither the Guardia Finanza - alleged to have fired the shots - or the woman have yet been found.
Two interesting points have been disclosed, the finding at the scene of three cartridge cases by Lt.Pietro PASQUA, CC.RR. Ludovisi, and the fact that Barbarisi's holster was empty. The revolver, if he had one, has not yet been traced.

9. However, I have succeeded in contacting an informant and he assures me that the assailant was a man, ROSARIO BENTIVEGNA, of via Torino 122, Rome, who left Rome on 7th June 1944 for the Viterbo district with a group of " Italian Patriots " to carry out guerilla warfare in German occupied territory.
Discreet enquiries are in operation, in via Torino district, to bring about the apprehension of the suspect for interrogation, and in any event my informant will advise me should Bentivegna - assuming he is out of Rome- return here.

10. This is an Interim report, and the return of these papers are requested, after passing through channels, for periodical recording of future developments. Statements, etc., are being retained for translation, etc.

T.W.M. Greenhill

T.W.M. GREENHILL, Capt., C.A.P.O.

In the field.
20.6.44.

Nothing to do with administration — merely a relation of police investigation

RAG

File
General Courts
RGH.

56

Recd. 29-8-1944

LEGAL

Major Hendrickson

Regional Legal Officer
Region IV

Dear Major Hendrickson,

Lt Col D.A.D. Young has been asked by Brigadier Low for a brief note on the "Bentivegna" case, in which after the accused had been sentenced to 18 months imprisonment, he was released on appeal.

Could you very kindly supply such a note direct to Colonel Young, G-2, RAAF as I understand the Brigadier is anxious to get this over tomorrow, if possible.

52

35

DECLASSIFIED
NND 785014
By NARA, Date

PLEAS OF THE ACCUSED

The accused Bentivegna Rosario pleads N.G. to the first charge; pleads ——— to the second charge; pleads ——— to the third charge.

~~The accused pleads to the first charge; pleads to the second charge; pleads to the third charge.~~

~~The accused pleads to the first charge; pleads to the second charge; pleads to the third charge.~~

FINDINGS OF THE COURT

The ~~accused~~ Bentivegna Rosario is found guilty ~~/ not guilty of the first charge; guilty / not guilty of the second charge; guilty / not guilty of the third charge~~ as stated in the Judgment.

~~The accused is found guilty / not guilty of the first charge; guilty / not guilty of the second charge; guilty / not guilty of the third charge.~~

~~The accused is found guilty / not guilty of the first charge; guilty / not guilty of the second charge; guilty / not guilty of the third charge.~~

SENTENCE OF THE COURT

The Court sentences the accused Bentivegna Rosario to 18 months imprisonment from date of arrest in respect of all offences charged in the above proceedings of which the said accused has been found guilty.

~~The Court sentences the accused to in respect of all offences charged in the above proceedings of which the said accused has been found guilty.~~

~~The Court sentences the accused to in respect of all offences charged in the above proceedings of which the said accused has been found guilty.~~

REVIEW

Conviction and sentence quashed

Dated 14 August 1944 Signature Richard H. Wilson
Col CAC
For the Acting Chief Commissioner

CONFIRMATION OF DEATH SENTENCE

Dated 194 Signature

DECLASSIFIED
Authority NND 785074
By NARA, Date

22 July 1944

The Court resumed at 1705 hours.

The judgment was read in Italian in open Court.

Lt. Sabatino hands in Penal Record of Accused, showing no entries (marked Exhibit 6).

Adv. Perris addresses Court in mitigation.

I ask you to restore Badoglio to Italy, which needs him. Remember the part he played during 9 months of oppression. You can impose sentence between 6 months and 5 years, subject to 1/3rd Reduction for the mitigating circumstances you have found. But we ask for the minimum. I invite you to consider Art. 133. Here you have the minimum grade of offence. I also ask for conditional suspension of sentence under Arts. 163 & 164. You can suspend if the sentence is up to 1 year.

Lt. Sabatino (invited to deal with the question of law)

Art. 133 deals with a large number of subjects. S.1 in effect says that you must take all aspects of the case into consideration. One of these aspects is the fact that this occupied territory. Order is one of the essential things, and you must not let the people have the idea that they are free to be disorderly.

The Court retired to consider Sentence.

Sentence was delivered in open Court.

H. G. Loittner
Colonel — President

L. Campbell LtCol
Major — Members.

55

DECLASSIFIED
Authority NND 785014
By NARA, Date

[redacted]

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV , LEGAL DIVISION
A.P.O. 394

30 August 1944

L/C/1607

SUBJECT : case of Rosario BENTIVEGNA.

THRU : Regional Commissioner;

TO : Lt. Col. D.A.D. Young, G-2
Roma Area Command.

1. Acting upon the written request of Major Battersbey of our Public Safety Division, I submit herewith, for Brigadier' Low's consideration, a brief statement with respect to the manner in which the above case was concluded.

2. In the city of Rome on the the above-mentioned accused, Rosario Bentivegna, was found guilty of a crime defined under the Italian law as "unintentional homicide". In the course of the trial, Counsel for the accused endeavoured to establish a case of "legittima difesa", but the Court after 9 days of most careful deliberation, concluded that a case of "legittima difesa" had not been made. The Court did conclude, however, that there were extenuating circumstances, which materially reduced the degree of the accused's offence. Thus, since the case was tried under the Italian law the sentence machinisms of the Italian law were applied in imposing sentence. Here it should be noted that though the Court finally agreed unanimously on the question of sentence, this was so only because a part of the Court felt that it would be bad policy for the Court to be divided in a case which had had so much publicity. That the sentence was exceedingly if not excessively mild was noted in the record by all Members of the Court. As you probably know the accused was sentenced to 18 months in prison.

3. Acting in strict compliance with the "consolidated instructions for Allied Military Courts" , the accused, through his avvocati , on filed his formal petition for review, in which many reasons (legal and factual) were advanced for the reversal of the trial Courts' findings and sentence.

DECLASSIFIED
Authority JCS ltr, 1/4/74
By Lewis NARS, Date 5/28/74

Classification changed to Unclassified by Authority of O.S.D. ltr dated May 3, 1972. Date: 5/24/74.

DECLASSIFIED
NND 785024
By NARA, Date

4. On 1 a decision was handed down by the Chief Legal Officer of the Allied Control Commission, speaking for the Chief Commissioner, in which the Court's findings and sentence were completely reversed and set aside on factual grounds.

In other words the Chief Commissioner found that a case of "legittima difesa" had been established and that accordingly the accused was innocent of any wrong. On the basis of this decision the accused was immediately liberated.

5. The Chief Commissioner's determination was a great dissappointment and in many respects very disturbing ,but then a solder is not entitled to a personal point of view in such matters.

Robert C.Hendrickson,
Major, A.U.S. J.A.G.D.
Regional Legal Officer.

RCH/PA.

~~CONFIDENTIAL~~

53

DECLASSIFIED
Authority NND 765014
By NARS, Date

40

~~CONFIDENTIAL~~

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
REGION IV LEGAL DIVISION
A.P.O. 394

L/C/1000.

16 August 1944

SUBJECT : Case of Bentivegna Rosario.

TO : Central Prosecutors Office,
Capt. Sam. Gilreath.

1. The formal decision on the review of the above cause is now before me.

2. Since the reviewing authority holds that a "legittima difesa" was completely established, the accused is entitled to be released forthwith.

3. Accordingly I enclose herewith the formal release with my signature appended.

4. Please see that the prisoner is released without any publicity and take such steps as may seem necessary to prevent any public display on the fact of either accused or his followers.

NORMAN G. [illegible]
MAJOR [illegible]
REGIONAL LEGAL OFFICER.

NGH/GC

Classification changed to Unclassified by Authority of O.S.D. ltr dated May 3, 1972. Date: 5/24/79.

~~CONFIDENTIAL~~

51

DECLASSIFIED
Authority JCS ltr, 1/4/74
BY Lewis NARS, Date 5/28/74

DECLASSIFIED
Authority NND 785074
By NARA, Date

41

MOD. No. 12
(riveduto)

FORM. No. 12
(revised)

COMUNICAZIONE DI SCARCERAZIONE AVVENUTA

Al capo delle carceri di Regina Coeli

Oggi, il Bentivegna Rosario,

è stato messo in libertà ~~dal Tribunale Militare Alleato~~ dalle Competenti Autorità per la Revisione del Processo perchè:

+ gli è stato conceso la cauzione
è stato prosciolto
ha pagato la multa inflittagli
è stato giudicato ad una pena condizionale

Data: 16 Agosto 1944

(Presidente del Tribunale Militare Alleato)

TRANSLATION

STATEMENT OF RELEASE FROM PRISON

TO: The Head of the Prison of Regina Coeli

Today Bentivegna Rosario

has been set free by the ~~Allied Military Court~~ Reviewing Authority, because he has

+ been granted bail
been acquitted
paid the fine imposed on him
been sentenced to a suspended sentence

Dated 16 August, 1944

President of Allied Military Court
ROBERT C. HENDRICKSON
MAJOR A.U.S.
REGIONAL LEGAL OFFICER.

50

DECLASSIFIED
Authority NND 785074
By NARA, Date

42

Legal

[redacted]

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV - LEGAL DIVISION
A.P.O. 394

L/C/1000

16 August 1944

SUBJECT : Case of BENTIVEGNA ROSARIO.

TO : Chief Legal Officer, Legal Sub-Commission,
Headquarters - Allied Control Commission.

1. Reference your letter ACC/4083/1/L dated 14 August 1944, subject as above.

2. Receipt is acknowledged of your decision, record and proceedings in the case of BENTIVEGNA ROSARIO.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

49

Classification changed to

DECLASSIFIED

380

DECLASSIFIED
NND 785074
By NARA, Date

43

Rec'd 15/8/44 X ~~S E C R E T~~ X

AUG 1 4 1944

L/1017

LEGAL

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.

14 August 1944.

SUBJECT : Case of BENTIVEGNA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV.

1. The record in the case of BENTIVEGNA Rosario is returned herewith with decision on review endorsed thereon. Please acknowledge receipt.

2. My decision on review, which is made with the approval of the Acting Chief Commissioner, is that the conviction and sentence are quashed.

3. The reasons for this decision are that in my opinion on the facts as found by the court, the defense of "legittima difesa" was completely established. I am satisfied that on this particular day the mere act by a young, excited Italian of drawing and pointing a pistol is sufficient evidence of an intention of shooting to justify immediate action by the accused in self-defense. Beyond this, there was definite evidence that the deceased "placed a round in the chamber." In these circumstances, where a life and death decision has to be taken in a fraction of a second, it is not in my opinion reasonable to expect the accused to deliberate upon the various courses which the court believed to have been open to him: still less is it reasonable to say that the method of defense which he did adopt was not "proporzionata all'offesa."

Richard H. Wilmer
RICHARD H. WILMER,
Colonel, CAC,
Acting Chief Legal Officer.

DECLASSIFIED
Authority: JCS 1/4/74 ltr.
By: Lewis, NARS. Date: 5/24/74.

~~S E C R E T~~

48

NND 785094
By NARA, Date

44

Legal

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1030 8 August 1944.

SUBJECT : Decision of Court in case of BENTIVEGNA ROSARIO.

TO : "Corriere Giudiziario"
Avv. Lombardi,
Via Montebello N/22.

1. In accordance with your request, I am forwarding herewith the decision of the Court in the famous trial of BENTIVEGNA ROSARIO.

2. I will be only too happy to supplement, at your request, any further information in regard to the case.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

45

47

DECLASSIFIED
NND 785024
By NARA, Date

D e c i s i o n .

Prima di tutto la Corte desidera dichiarare che nel giungere alla decisione di questa causa, non è stata determinata nè dall'uno nè dall'altro lato da considerazioni politiche. Nel pensiero della Corte non ha alcuna importanza il fatto che l'accusato sia o meno membro di qualsiasi partito politico o che i manifesti, i quali, venendo strappati originarono i fatti incresciosi che seguirono, appartenessero ad un qualsiasi particolare partito od organo politico. Il deceduto era un essere umano e l'imputato deve essere giudicato da questa Corte ugualmente come un essere umano.
La Corte ha già dichiarato che, a meno che non sia convinta al di là di ogni ragionev ole dubbio della colpevolezza dell'imputato, egli deve essere prosciolto. Nella presente causa non vi è dubbio che l'imputato abbia ucciso il Tenente Barbarisi; egli stesso lo ha ammesso. Perciò, l'unica questione che rimane è se in queste particolari circostanze l'uccisione è stata un atto legale o illegale. L'imputato sostiene che si trattava di un atto legale, per la ragione che egli ha agito in propria difesa ed invoca l'applicazione dell'art. 52 del Codice Penale Italiano.

Nel valutare la fondatezza della richiesta dell'imputato, la Corte si deve lasciare guidare unicamente dalle prove risultanti dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese molto attentament in considerazione. Come è già stata messo in rilievo, vi è un considerevole conflitto di testimonianze fra i vari testi, con riguardo a molti particolari di maggiore o minore importanza. La Corte non si propone di esporre qui dettagliatamente il suo giudizio circa l'esattezza o meno di ogni testimonianza. Avendo sentito e valutato tutte le prove, è stato possible formare un quadro ben chiaro dei punti essenziali di ciò che è avvenuto.

La Corte è convinta che l'imputato, vedendo il deceduto strappare i manifesti, gli si rivolse in maniera arrogante ed ostile; che il deceduto rispose in maniera ugualmente ostile; che tirò fuori la pistola e la puntò contro l'imputato; che l'imputato, in seguito a ciò, senza aspettare, tirò fuori a sua volta la pistola e fece fuoco sul deceduto. Nell'opinione della Corte, questa è una causa in cui due giovani eccitabili e impulsivi perdettero il controllo dei nervi e ricorsero precipitosamente e senza necessità all'uso di armi da fuoco.

Rimangono perciò da considerare le conseguenze legali delle azioni commesse dalle due parti. Nel far ciò, noi non dimentichiamo che i fatti avvennero il 5 Giugno 1944, giorno in cui, senza dubbio, l'atmosfera era satura di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di estrarre la pistola non era giustificato e costituiva una "offesa in giusta" seconda l'art.52 del Codice Penale. Posto ciò, la Corte

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è però altrettanto convinta che la reazione dell'imputato è stata ugualmente ingiustificata ed eccedette colposamente i limiti della proporzionata all'offesa. Come ha detto il Pubblico Ministero, l'imputato, quando si trovò dinanzi alla pistola del deceduto, aveva altri mezzi per fronteggiare la situazione, senza far fuoco uccidendo senz'altro. Il fatto che il deceduto estrasse la pistola non significa in alcun modo che egli avesse intenzione di sparare. Non vi è alcuna prova che egli avesse tale intenzione e nessun teste ha affermato che siano state scambiate parole dalle quali risulti che il deceduto aveva una tale intenzione. In ogni caso, è chiaro che l'imputato aveva a sua disposizione altre vie, oltre a quella estrema da lui scelta.

In tale circostanza, la Corte decide :

1) che la difesa, basata sull'art. 52 del Codice Penale, non è stata completamente dimostrata.

2) che l'imputato non ha agito sotto qualsiasi errore, come contemplato dall'ultimo paragrafo dell'art 59.

Pertanto, la causa deve essere giudicata in base all'art. 55 e il reato è punible secondo l'art. 589.

Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi è stata prova di circostanze aggravanti, come indicato nel foglio di accusa. Pertanto la Corte deve esclusivamente prendere in considerazione se vi sono le circostanze attenuanti previste dall'art 62 del Codice Penale Italiano.

In base alle prove, la Corte decide che l'imputato ha diritto a beneficiare della circostanza attenuante specificata nell'art 62, comma 2. In relazione a detto punto, è stato fatto rilevare alla Corte che opinioni contrastanti sono state espresse da alte autorità giudiziarie Italiane in merito alla questione se un imputato che è giudicato colpevole in base all'art. 55 possa effettivamente beneficiare dell'art. 62 comma 2 ; ma la Corte decide che, visto tale conflitto di opinioni, ogni dubbio nella presente causa deve essere risolto in favore dell'imputato. Per le ragioni summenzionate, la Corte dichiara l'imputato colpevole non dell'accusa fattagli nel foglio d'accusa (cioè,-art.575 e 61 N.10 del C.P.I.) ma del minore reato contemplato nell'art.55, punibile in relazione all'art.589, col benificio dell'art. 62, N.2.

145

Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti e se desidera fare delle osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate, la Corte

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NND 785024
By NARA, Date

è pronta ad ascoltare tali argomenti. Ma, prima di udire tali argomenti della difesa, la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di precedenti condanne dell'imputato.

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By NARA, Date

48

File Kil. 1029

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

ACC/4083/1/L. /rlp.

5 August 1944.

SUBJECT : Petition for Review - BENTIVEGNA Rosario.

TO : Regional Legal Officer (THRU: Regional Commissioner), Region IV.

1. I return herewith the Petition for Review in the above case and the Remarks of the Court. You will notice that I have written a note on the two last sentences - sentences which affect neither the verdict nor the sentence of the court.

2. No doubt, you will submit the record for review in due course.

I. Campbell Lt Col

I.G.H. CAMPBELL,
Lt. Col.,
Chief Judicial Officer,
for Acting Chief Legal Officer.

Encl.

REGION IV CASE N° 7762 43

386

DECLASSIFIED
NND 785024
By NARA, Date

49

~~R E S T R I C T E D.~~

HEADQUARTERS.
ALLIED MILITARY GOVERNMENT
ROME REGION
LEGAL DIVISION
A.P.O. 394

L/1007

1 AUGUST 1944.

SUBJECT : Bill for service in BENTIVEGNA case.

TO : Avv. Ruggero di Segni.

1. The bill enclosed in your letter is entirely in order, however it is essential that it be submitted in triplicate to meet our procedural requirements, before it can be approved by the appropriate authorities.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

ENCLOSURES:

Letter from Avv. R. Di Segni to Legal Division dated 27/7/44,
Bill from Avv. R. Di Segni , dated 27/7/44 for Lit.4.000,= Re. Bentivegna case.

42

REGION IV CASE № 7762

DECLASSIFIED
Authority: JCS 1/4/74 Ltr.
By: Lewis, NARS. Date: 5/24/74.

387

DECLASSIFIED NND 785024 By NARA, Date

50

JUL 28 1944

AVV. RUGGERO DI SE^NI
ROMA - LUNGOTEVERE ALTO 1
TELEF. 560-869

Legal

1007

Rome, Jr : 27, 1944

To: Major Hendrickson
Legal Division
Rome Region

Dear Sir,

I enclose herewith the bill regarding the case of Benti= vegna.

I have changed the figure we spoke about, thinking the importance of the case and the responsability would justify it. But will you please decide as you think better.

I thank you,

yours

41

AUG 4 1944

Rec'd Aug 4'44

Legal

AVV. RUGGERO DI SE^NI
ROMA - LUNGOTEVERE ALTO 1
TELEF. 560-869

- August 1944

1007

To : A.M.G.

ROME REGION

LEGAL DIVISION

I enclose the new copies of my bill regarding the Bentivegna case, as requested with your letter dated I August 1944.

I return also the previous letter and bill.

Enclosures:
1) Letter and bill dated 27 July 1944.
2) Two copies of the bill.

40

DECLASSIFIED
NND 785024
By NARA, Date

51

1

A.M.G.Superior Cou· Rome Area
Palazzo di Giustiz..a,Rome

Rec'd July 10'44

Sibg
RHH.
1003

Rome ,July 8th 1944

Major Robert C. Hendrickson
C.M.P.,
Regional Legal Officer,
Roma

SUBJECT: A.M.G.v. BENTIVEGNA ROSARIO, di VINCENZO

1. Confirming conversation with Capt.Gazziano the Prosecution is now prepared to proceed with the case on Wednesday July 12th 1944.
2. May arrangements now be made for a Court.
3. Copy charge sheet served on the accused is enclosed herewith.

Howell Jones Capt.
Howell Jones Capt.
Superior Court Prosecuter

Enclosure: Copy charge sheet

39

DECLASSIFIED
NND 785024
By NARA, Date

52

Form. No. 4

ALLIED MILITARY GOVERNMENT
(GOVERNO MILITARE ALLEATO)

CHARGE SHEET
(FOGLIO D'ACCUSA)

Place (luogo): Rome

Date (data): 8 July 1944

BENTIVEGNA Rosario di Vincenzo
Name of defendant (nome dell'accusato)

Via Torino 122, Roma
Address (indirizzo)

Is hereby charged with the following offenses:
(E' qui accusato delle offese seguenti):

First charge: Responsible of the offence contemplated by Art. 575-61 N°10 Penal Code (Italian Law)

Particulars: For having killed in Rome, on June 5th, 1944, by three shots of pistol the Lieutenant Guardia di Finanza Giorgio Barbarisi.

Second charge:

Particulars:

TRADUZIONE

Prima accusa: Colpevole del reato di cui agli Art. 575 - 61 N.10 del Codice Penale Italiano

Dettagli: Per avere in Roma, il giorno 5 giugno 1944, ucciso con tre colpi di arma da fuoco il Sottotenente della Guardia di Finanza Giorgio Barbarisi.

Seconda accusa:

Dettagli:

(Se non tradotto dall' ufficiale, voi dovete farvelo tradurre da un amico o presso qualsiasi Ufficio di Questura).

The above charges are referred for trial before an A.M.G. GENERAL COURT, Palazzo di Giustizia, Rome, on 12 July 1944, at 0930 hours. (name and address of Court)

(Le suddette accuse sono riferite a processo davanti alla CORTE GENERALE del G.M.A., Palazzo di Giustizia, Roma, il giorno 12 luglio 1944, alle ore 9,30. (nome e indirizzo della Corte))

By order
(Per ordine)

Lawrence Jones Capt

Judge, Summary Military Court or other authorized person.
(Giudice, Tribunale Militare inferiore o altro individuo autorizzato).

FOR RIGHTS OF DEFENDANT SEE REVERSE SIDE OF THIS SHEET.

390

DECLASSIFIED
NND 785024
By NARA, Date

35

Legal file

HEADQUARTERS,
ALLIED MILITARY GOVERNMENT
REGION IV.
LEGAL DIVISION
A.P.O. 394

L/1007

6 AUGUST 1944.

SUBJECT : Petition for Review BENTIVEGNA ROSARIO.

TO : Chief Legal Officer, Allied Control Commission.

1. Pursuant to the requirements established by paragraph 6 of Art. 32 of the Consolidated Instructives for Allied Military Courts, I enclose herewith :

a) Petition for Review in the above stated matter with the comments of the trial judges appended thereto.

b) Complete record of case, plus six exhibits.

2. In view of the political atmosphere which has surrounded this case since its inception, the remarks of the trial judges should be carefully noted and considered by the Reviewing Authority.

ROBERT C. HENDRICKSON
MAJOR, A.U.S.
REGIONAL LEGAL OFFICER.

RCH/AC.

Removed for Preservation Under Archival Order

37

DECLASSIFIED
Authority: JCS 1/4/74 ltr.
By: Lewis, NARS. Date: 5/24/74.

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NND 785021
By NARA, Date

Talked to Col. Pollock about this. He feels that if any harm has been done it is over with. It would have no effect on our courts. Newspapers should be strongly warned by our P.R.O. that they are not to discuss cases in papers as they have done in Bentivegna case.

Recommend I talk to major Leacacos about this.

RAS

File RAS.

DECLASSIFIED NND 785024 By NARA, Date

55

Rec'd July 18 '44

Halifax

P/Q/P/16

Confidential-Urgent.

Office of D.C.P.S.
Rome, 16/7/44.

Lt. Col. J.R.Pollock,
Chief Public Safety, Rome.

Dated 18

May I draw your attention to the attached newspaper - L'Unita, dated 14/7/44, page 1, Col.1 and the caption at the right ~~hand~~ top corner of page 1.

The column is one such as would not be permitted in even the most provocative of presses. Two cases are referred to:

(i) That of Bentivegna

(ii) That of Caruso.

The first is under trial and the case is therefore sub-judice.

The second has not yet been brought to trial, yet Caruso is, in this article, already condemned by the paper as the "Assassin of Ardeatina".

I would like to suggest that this article oversteps the bounds of press liberty, and that the caption, if not illegal, is an improper one at a moment when the accused, Bentivegna, is under trial.

Could legal opinion please be obtained, with a view to correction of this type of journalism.

The law books at my disposal do not cover this subject sufficiently.

Major.

Deputy Chief Public Safety.

Copy to:

Director Public Relations.
(For information)

PWB

To Maj Leacacos (Thro' Maj. Hendrickson)
Not much can be done now, but perhaps the Press might be warned of possible injustice to accused persons when case is sub judice & to refrain from such comments

J Pollock Lt Col

7/7

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NND 765024
By NARA, Date

TRANSLATION

Document: Newspaper.
Date: I4th July I944.
From: Newspaper "L'Unità".
To:

The Case BENTIVEGNA.

The high number of Germans killed in the hardest of the wars, the partisan war in the roads, now they are not in our country, they do not terrorize the Italian population, subject to the enemy joke, they do not fight against the liberators of our democracy, Armies. The 84 Germans strike off the fight by Bentivegna, in 9 months time, they will not kill, they will not pour more brave blood of British, American and French soldiers who fight for the liberation of our Country? This is the mind which rise, to day in the spirit of the Roman Patriots and becomes moved sentiment in the reminding of one of the most shining image of the heroic resistance of Rome.

9 month of terror. The Roman people, under the German heel subject to the brutal domination of Hitlerians and to the sadic torture of their brutal companions, the Fascist; suffers reists and rebels himself. A phalanx of heros encourages the resistance, drives the revolt, the G.A.P.. And among the G.A.P. who are for the popular mind as heros of legend, an image contrasts, harder, clearer better engraved than any else, an image that only his companions know to which very few can give a name, but the enemies of the people cannot remind without a frozen trembling of fright. A man, an hero among the heros, from whom also the death seems fright, Rosario Bentivegna. 50 war actions against Germans and Fascists, 84 enemies killed in action, this is the balance of 9 month Bentivegna's war activity.

And when the Germans would be sent out from Rome, thought the Roman workers, will be the heros of resistance to be in charged to destroy what Fascists hve left; to contribute , holding the first rank, to purify the life of our country. And when the Germans went away from Rome, while the Allied Military Authorities had not organized their Control power, the heros of resistance have been in charged by the Committee of National Liberation to mainatain the order, to,watch and reperess all offensive return of Fascists.

Undoubtely & with reason Rosario Bentivenga exchanged man dressed as soldier for fascist or militia-man - who on the 5th (while he was on duty) tore from walls with gesture of hatred & contempt - manifests of Liberation Committee Party and Communist Party - And his impression was strengthened by fact that upon intimation of ceasing stranger took out pistol & aimed against patriot against whom in meantime another fired. 35

In evident state of legitimate defense against aggression that he rightfully thought came from fascists - Bentivenga reacted with same spirit as when he fought in the 50

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battles during past nine months.
After aggressor was killed it was made clear that it was not a fascist but ~~fixxxxxxxffiner~~.custom officer.

But as the facts happened do not give any relief to the displeasing misunderstanding.

Remains complete and incontestable all the true that Bentivegna has proceeded for self defence, and the Roman citizens truly are surprised because Bentivegna is in prison, accused of murder.

Bentivegna who during 9 months has spent his life, every day for the defence of hid Country, fighting on the front of liberty to hemp with the most dangerous and efficient action the advance of the liberator Allied Armies. Bentivegna, the hero of all the battles, closed in the same prison where is Caruso, the dark murder of Ardeatina Grave! Bentivegna the heroic purifier of the heroic time of Nazi terror, purified him also because he has done his task being in duty.

Bentivegna the hero of antifascism prosecuted by antifascistx Authorities.

With reason today the Bentivenga case - troubles the conscience of patriots & of all the Italians. Only one way is to appease or calm this - apply the law with equanimity - with justice & democratic desire to serve population & so acquit & free the heroic patriot.

(2)

The peuple and the Patriots of Rome wait for the liberation of Rosario Bentivegna.

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NND 785024
By NARA, Date

file in case Bentivegna

President of the Allied Military Court
at the Palace of Justice.
Rome.

To the Direction of the Daily Paper "Risorgimento Liberale",
Via Frattina 89,
Rome.

With reference to the Bentivegna case, part of the town press forces itself to describe the latter as the pure figure of a patriot and almost a heroe. Apart from the fact that the public is more than convinced that he is guilty of a real and proper murder of the poor Lieutenant Barbarisi, it is obvious that Bentivegna is the typical figure of a born delinquent. In fact he has on his conscience the tragic end of 320 persons in the Ardeatine caves: if he had had the smallest amount of heroic sense, he would have had the courage to present himself at the right time to the Germans to confess his guiltiness of the incident of Via Rasella, in order to save the lives of 320 innocent and really heroic patriots.

But he preferred to sacrifice the life of 320 patriots rather than face death himself: can this be called heroism? no; this is the utmost degree of cowardice, and the souls of the 320 persons of the 24th March call out for vengeance against the cowardly Bentivegna, who should be repudiated and disowned by all parties, if they intend really to honour the memory of the 320 martyrs of the Ardeatine caves.

Rome. 14th July 1944

32

A public observer.