To the President of the Allied Military Court
sitting at the Palace of Justice.
Rome.

Re case

To the Director 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 Bartolini, 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 massacre of Via Rasella, in order to save the lives of 320 innocent and really heroic patriots.

Put 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

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Non ha osservazioni

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Rec'd July 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 Militare 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.55-589-62 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 1944 (vedere fogli allegati)

(Firma dell'accusato o del suo Procuratore)

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 attached sheet.

Data 4 August 1944

H. L. Litzner
Colonel
(Firma e qualifica)
Presidente.

DECISIONE DELL'UFFICIALE CAPO DEGLI AFFARI CIVILI

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Data 194

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

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REGION IV CASE N° 7762

1943 - Napoli, R. Tip. Giannini

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 accade 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 di della Corte, si può riassumere così:

In un'atmosfera di guerra guerreggiata, il 5 giugno 1944, il Barbarisi provocò il tempestivo e doveroso intervento di Rosario Bentivegna con il gesto non giustificabile di strappare i manifesti affissi nella edicola di Via Tre Cannelle ed anzichè scusarsi per la sua arbitraria azione reagì eventualmente come dovuta ad un errore o addirittura, estrasse senz'altro la pistola e la puntò sul

[illegible] Bentivegna.

Di [illegible] la Corte aveva il dovere di prevenire alla legittima difesa [illegible] il Bentivegna non reagì contro l'atto ingiusto

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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 quello di reagire rapidamente con violenza.

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Sembra ora non la impugnazione fatta da la Corte sulla [illegible] intenzione del Barbarisi a sembra inesatta l'affermazione che la [illegible] pistola non significa [illegible] intenzione di sparare. Se il Barbarisi non avesse di fatto di avere che il

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

Da oltre l'esame obiettivo della situazione, era pure necessario prendere atto se il Bentivegna non abbia legittimamente ritenuto di trovarsi di fronte al immediato pericolo e non di aver subito ragionevolmente [illegible]

[illegible] che il [illegible] dovesse [illegible] di fronte al pericolo – e di non [illegible] – non lo ha provato – si dovrà [illegible] che [illegible] aveva rivolto minaccia-

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da Sollo, provvida integrità fisica e costretto a reagire senza perdo= re tempo per non soccombere di fronte all'avversario.

La nostra legge riconosce lo stato soggettivo di legittima dife= sa. Esistenti fatto legittima difesa putativa; occorre solo la condi= zione che la convinzione soggettiva sia basata su condizioni di fat= to 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 perico= lo nel solo modo eseguito: ricorrendo all'arma che era in suo possesso

Per queste considerazioni riteniamo che il verdetto della Cor= te Generale debba ritenersi viziato da una intima contraddizione lo= gica 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 Benti= vegna ha agito in istato di legittima difesa valutando però in modo inesatto e perciò colposamente, la proporzione fra la reazione e l'of= fesa ed ha aggiunto doversi riconoscere che vi fu azione provoca= toria da parte del Barbarisi.

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

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

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Con la seconda [illegible], la Corte ha ritenuto assolutamente [illegible] avere dichiarato nel verdetto, [illegible] che [illegible] [illegible] condizionata all'esistenza del [illegible].

[illegible] la pena e nel dichiarare [illegible] di sospen= [illegible] condizionale a termini dell'art.163 del codice penale [illegible]; la Corte doveva astenersi dai limiti fissati dall'art.

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dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato ma ha accedu to 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 sierisce a tale criterio di esemplarità ammesso dalla Corte.

In materia colposa non si può valere la pericolosità se non nel suo momento 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, e ciò in quanto il delitto colposo attribuito al Bentivegna

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[illegible] glt [illegible]

[illegible] to the accusation, we are of opinion that the [illegible] the accused with the [illegible] of [illegible] the [illegible] (which [illegible] and [illegible] the witness) on the best [illegible] on the evidence, to which we listened with great attention, that the accused did engage the enemy in [illegible] in defence, in the sense that his action which he knew was unlawful, i.e. wilful destruction by the use of explosives of property belonging to the Government. We adhere to the view expressed in our judgment that the mere fact that the accused 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 accused 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 reached 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 extenuating 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. It may not [illegible] that there may be political reasons, of which we are not the proper judges, which might render a mitigation of sentence desirable. In this, it is suggested that before confirming the sentence the Political Branch of the Allied Commission, who is in a position to see the future maintenance of law and order in Italy, and who is in the best position to judge the probable political consequences of any such action,

[illegible] point.

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H.L. [illegible]
Colonel

[illegible]

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)

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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.

Rcd Aug 1/44

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 dece= "duto 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 la camicia della camicia di bocciato, non metteva in mostra visibilmente alcuni distintivi della sua qualifica di uffi=

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ciale di Polizia;

b) il Bentivegna intervenne contro il Barbarisi soltanto quando questi arbitrariamente si dette a strappare, con evidente manifestazione di disprezzo, 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 affissi 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-

REGIONE IV CASE N° 70162

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 reazione 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:

REGIONE CASE 7762

" 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 indugio per non soccombere di fronte all'avversario.

La nostra legge riconosce lo stato soggettivo di legittima difesa allorquando ricorrono tutti gli elementi della legittima difesa putativa, ponendo solo la condizione che la convinzione soggettiva sia basata su condizioni

REGIONE N CASE N° 7762 1182

da fatto, che l'uomo normale approverebbe 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 dello stesso codice. La Corte ha riconosciuto che tali criteri potevano essere invocati tutti a favore dell'imputato, ma ha deciso alla maggioranza del B. . proprio per quelle ragioni politiche che aveva dichiarato di voler trascurare nella determinazione della sua decisione.-

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REGIONE P. CASE N. 7762 1153

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 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 provocazione, 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 sovraccitazione di carattere eccezionale dovuta sia all'atmosfera del momento, sia alla azione provocatoria riconosciuta dalla Corte.-

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'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 che dal punto di vista morale.-

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 patrioti romani, ai quali ogni giorno si rivolse il Comando S.I.M.A. 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 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 -

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BENTIVEGNA ROSARIO

At about 3 pm, on 5th June 1944, shots were heard in the Via Tre Cannelle, Rome, and a witness upon visiting the spot found the dead body of Giorgio Barbarisi, a Lt. of the Guardia di Finanza, lying across the roadway in the above street. He saw a young standing near the body with a pistol in his hand, and, upon questioning the young man, the witness learned that he had shot him because the Lt. had been tearing Communists posters from the wall.
I took up the enquiry, assisted by the agents of the Questura, learned the identity of the assailant and caused the suspect to be brought to me at the AMG.HQ., Piazza Venezia, where on 22 June 1944 I interrogated him and he made a statement, under caution, admitting that he had shot and killed the Lt., having fired three shots directly at him. In mitigation the prisoner alleges he was menaced with a pistol by the Lt., after he, the prisoner, had remonstrated with the Lt.

1157

ROME [illegible]
ALLIED [illegible] COMMISSION
Police Headquarter

26th June, 1944.

To: Major Hendrickson, Legal Branch.

From: Chief, Public Safety

Subject: Shooting of Finance Guard Lieutenant.

1. Will you please be advised that, this day, on passing on the papers regarding the above case to Col. Poletti, the following quotation was made on the file :O.K. Convene General Court".

2. In view of the necessity for preparing the statements etc. in this case, may I suggest that the Court be convened, if convenient to you, for Tuesday, 27th June, 1944, a later date would be more desirable.

for J.R.POLLOCK
Chief, Public Safety,
ROME.

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ROME AREA COMMAND
ALLIED MILITARY GOVERNMENT
A.P.O. 394 U.S. ARMY

24 June 1944

Subject: Allied Court Case
To: Chief Legal Officer, Rome Region A.C.C.

I. Herewith the arrest report on the case:

BENTIVEGNA ROSARIO di Vincenzo,

of which is recommended for trial by a General Court.

S. B. Gilreath Capt.
Summary Court Prosecutor

Received the above arrest report.

Signed

Date

1159

12.

AMG/SC
H.Q.
Piazza Venezia
Rome.

23rd June, 1944.

Statement of BENTIVEGNA Rosario fu Vincenzo, age 22 yrs. 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.

I was a partisan in Rome 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 and was interrogated because they found out that I concerned on 5th May 1941, in distributing anti-fascist bills. They kept me for four or five days and released me on the condition that if I was caught again circulating this propaganda within three years I would be imprisoned. After about eighteen months I again started by communist activities. During the eighteen months I took up my medical studies.

In February 1943, because of my age, I was called up for the Army and was put into a Sanitory Company No.8, and remained in Rome in the Military Hospital at Celio. I was there until May 1943, when I was released for an indefinite period. I was still interested in anti-fascist and on July 1943 I again contacted my Communist comrades. We could not become active openly so I became an active member of the Communist Underground movement in Rome. My area was in the centre of Rome and I was the second in Command. I held this position until 15th November 1943, when I became involved in the G.A.P. which means Gruppo Azione Patriotica, a part of the Communist Party, and was the Commander of the "Pisacane Squadron".

On 22nd January 1944, when the Allies landed at Anzio I was sent to Centocelle in charge of the Partisans there. In March I was recalled to Rome and again took up my previous Command, and have been here ever since.

In May 19[illegible], I was sent out of Rome in charge of the Partisans between Rome and the Cassino front. I returned to Rome on 2nd June 1944 to make a report to my headquarters. On 4th June 1944, I was on my return to Cassino front when I was stopped by French troops near the Ponte Mammolo about 10 kilometers outside of Rome on Via Tiburtina, and owing to the fighting I returned to Rome, and took up service with my patriots in the San Lorenzo district. On the morning of 5th June 1944 I was sent to guard the building of the Unita' newspaper in Via Quattro Novembre, Rome, near Via Tre Cannelle.

I arrived there at about 10.30 a.m. At about 3 p.m. I walked into Via Tre Cannelle on a tour of inspection and saw two men, one in civilian clothes and one in uniform, who was carrying his coat over his arm. It was an army uniform, either officer or non-commissioned officer, and I did not recognise what arm of the Italian services he belonged to.

These two men were tearing down posters from the wall near the steps leading from Via Tre Cannelle to Via 24 Maggio, including posters of the Unita' newspaper. I was with a friend named Carla Capponi, 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 arrogangly. "I can do as I please, who are ou?" 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 stuck the revolor in my body near the heart.

I had my right hand in my trousers pockets, 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 rmember which way he went. As I saw the man on the ground, I then noticed he was a Lieutenant of the Guardia di Finanze. My girl friend was present and she saw all that happened. There were people also at the windows of surrounding houses. I did not know the uniformed man or the man in civilian clothes. The girl and I kept the public bak. Shortly afterwards a man, who I would know again, wearing a white armband, red, white and green in centre with "Police" on it, came up and asked me 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 twenty minutes, and returned to the Unita' building with the girl Carla, and the man who had taken particulars from, and he verified my identity.

I left Rome on 7th June 1944 and went to the Viterbo district. I stopped there until 19th June 1944, doing Communist work, and then returned to Rome.

I hand you the false identity card and military license. I gave my pistol as a present to an Australian Lieutenant, who called at the Unita' offices on 6th June 1944. I think his name was "PETTER". He was with the Fifth Army. They all know him at the Unita' 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 I thought the Lieutenant was going to shoot me because he appeared very agressive. 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 license because the Fascists were looking for me because of any anti fascist activities and for no other reason. I have a good character.

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This statement has been read to me in Italian by Cpl. Conte, 2675th Regiment, Coy. "L" and it is the truth.

Rosario Bentivegna

Witness; T.W.M. Greenhill, Capt.

23rd June, 1944.

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La sottoscritta sorella dell ' Avvocato Cesare Lionelli fucilato il 24 Marzo 1944 chiede pochi minuti di attenzione nella lettura di quanto segue.

In un articolo del giornale 'Avanti' apprendo che ad effettuare l'attacco contro le S.S. Tedesche il 23 Marzo fù il Bentivegna Allora come si osa chiedere l'assoluzione di un tale criminale? Con quale coscienza si vuol descrivere un eroico patriotta, se su di lui pesa la responsabilità del massacro di via Ardeatina? Se oggi centinaia di famiglie sono nel lutto e centinaia di bambini senza padre, lui è il maggiore responsabile. Il Bentivegna , come tutti, non ignorava che per ogni Tedesco Ucciso, dieci dei suoi fratelli che si trovavano nelle mani dei tedeshi sarebbero stati uccisi. Perchè invece di fare l'eroe uccidendo degli uomini non attaccò qualche deposito di munizioni o altro materiale bellico? Avrebbe reso opera più utile. Così per il suo gesto che, si vuol chiamare eroico, ha provocato il massacro di centinaia di uomini. Perchè non ha mostrato il suo coraggio, quando ha visto che tante vittime pagavano, per il suo gesto, presentandosi come autore delle uccisioni di via Rasella? Un uomo eroico, come si vuol far credere il Bentivegna, lo avrebbe fatto.. Per me il Bentivegna non è altro che un volgare assassino assetato di sangue .

Mi aspetto che un uomo che ha sulla coscienza tanti delitti venga condannato al suo giusto gastigo, questa sarebbe vera giustizia. I martiri di via Ardeatina, quei veri eroi, che non uccidevano, ma tutto facevano per il bene del nostro popolo, gridano vendetta.

Lionelli Enrica n° 2 Imbastici
Eccleschi Olivia in Bandicenti

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IX. P.W. Form 1.

GOVERNO MILITARE ALLEATO - ALLIED MILITARY GOVERNMENT

RAPPORTO D'ARRESTO - REPORT OF ARREST

JUN 24 1944

I. - Numero delle persone arrestate - Number of persons arrested.

Numero delle persone arrestate ed accusate congiuntamente in questo reato:
Number of persons arrested and charged jointly with this offence: ONE.

II. - Persone arrestate - Persons arrested.

(a) BENTIVEGNA. Rosario. VICENZO. 22 *Età:* Age: M *Sesso:* Sex: *Stato Civile:* Marital Status: S.

(Cognome - Last Name) (Nome - First & Middle Names) (Paternità - Father's Name)

Indirizzo: Address: Via Torino, No. I22. Rione Esquilino, Rome. *Tess. di Ricon. N.* Ident. Card. No. Not known

(Via - Street Address) (Comune - City)

(b) //// *Età:* Age: *Sesso:* Sex: *Stato Civile:* Marital Status:

(Cognome - Last Name) (Nome - First & Middle Names) (Paternità - Father's Name)

Indirizzo: Address: //// *Tess. di Ricon. N.* Ident. Card No.

(Via - Street Address) (Comune - City)

Elencare al tergo di questo foglio altri congiuntamente accusati in questo reato.
List others charged jointly with this offence on back hereof.

III. - Accusa e causa dettagliata dell'arresto - Charge & details of incident leading to arrest.

Luogo dell'arresto: Place of arrest: Piazza Venezia, Rome. *Data:* Date: 22.6.44. *Ora:* Time: 2.30pm.

Luogo del reato: Place of offence: Via tre Cannelle, Rome. *Data:* Date: 5.6.44. *Ora:* Time: about 3 pm.

Rapporto dettagliato dei fatti che costituiscono il reato:
Detailed statement of facts constituting offence: At about 3 pm., on 5th June, 1944, shots were heard in the Via tre Cannelle, Rome, and a witness upon visiting the spot found the dead body of Giorgio Barcarisi, a Lt. of the Guerdia, lying across the roadway in the above street. He saw a young man standing near the body with a pistol in his hand, and upon questioning the young man, the witness learned that he had shot him because the Lt. had been tearing Communist posters from the wall. I took up the enquiry, assisted by the agents of the Questura. Learned the identity of the assailant and caused the suspect to be brought to me at the A.M.G. H.Q., Piazza Venezia, where on 22nd June, while being interrogated he made a statement, under caution, admitting that he had shot and killed the Lt., having fired three shots directly at him. In mitigation, the prisoner alleges he was menaced with a pistol by the Lt., after he, the prisoner, had remonstrated with the Lt.

A report of the case, together with copies of all statements, will be forwarded in due course.

(Continua al tergo di questa pagina se necessita più spazio od allegare altri fogli).
(Continue on other side if more space needed or attach additional sheets).

IV. - Elenco e descrizione di proprietà sequestrata - List and description of property seized.

N I L.

Laddove è adesso la proprietà:
Present whereabouts of property:

V. - Nome ed identità dell'ufficiale facendo l'arresto - Name and identity of arresting officer.

GREENHILL, T.W.H. *(Nome - Name)* | Capt. *(Grado - Rank)* | 291709. *(Matricola - A. S. N.)* | Gen. List. (A.F.H.) | A M G. *(Reparto - Unit)*

VI. - Testimoni - Witnesses.

Riveda i nomi delle persone che furono attualmente i testimoni alla commissione del reato accusato, dandone il grado, numero di matricola, e il numero APO. se si tratta di personaggi militari, e l'indirizzo se si tratta di borghesi.
State names of the persons who actually witnessed the commission of the offence charged, giving rank, organization, serial number and APO Number if Military personnel, and address if Civilians.

No. 1 Main witness, as in (5). Several other witnesses will be available. Enquiries are continuing.
(In breve riassunto di ciò che questo testimone attesterà). (Summarize briefly what this witness will testify.)

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No. 2 ////
(In breve riassunto di ciò che questo testimone attesterà). (Summarize briefly what this witness will testify.)

VII. - Il completamento del rapporto - Completeness of report.

Deve essere sottomessa altra informazione? (Vedi istruzioni) Report, etc., will be submitted.
Is further information to be submitted? (See instructions)

VIII. - Stazione CC.RR. o commissariato di P. S. dov'è la matricola - Station where booked.

Stazione: Station: Questura, Via Genova, Rome. *Numero di Matricola della P. M.* M. P. Register or Booking No.: 1169

(Stampatello) (Print) Capt. G.H. *Firma* Sign: T.W.H. Greenhill

IX. - Interprete - Interpreter.

Se un interprete è stato usato nell'interrogare l'accusato o i testimonii, dichiara il suo nome ed indirizzo.
If an interpreter was used in interrogating the accused or witnesses, state here his name and address.

Cpl. Conti, 2675 Reg. Coy. L. Attached to office of Lt.Col. Pollock. A.M.G.

X. - Prigione dove l'accusato è detenuto (gli accusati sono detenuti) - Prison where accused is (are) confined.

Nome della Prigione:
Name of Prison: Regina Coeli Prison.

No. di Matricola del Carcere:
Prison Registry Number: (a) 19952 (b) (c) (d) (e)

XI. - Persone arrestate - continuazione del paragrafo II. - Persons arrested - continued from paragraph II.

(c) *(Cognome - Last Name)* *(Nome - First & Middle Names)* *(Paternità - Father's Name)*
Indirizzo: Address: *(Via - Street Address)* *(Comune - City)*
Età: Age: *Sesso:* Sex: *Stato Civile:* Marital Status:
Tess. di Ricon. N. Ident. Card No.

(d) *(Cognome - Last Name)* *(Nome - First & Middle Names)* *(Paternità - Father's Name)*
Indirizzo: Address: *(Via - Street Address)* *(Comune - City)*
Età: Age: *Sesso:* Sex: *Stato Civile:* Marital Status:
Tess. di Ricon. N. Ident. Card. No.

(e) *(Cognome - Last Name)* *(Nome - First & Middle Names)* *(Paternità - Father's Name)*
Indirizzo: Address: *(Via - Street Address)* *(Comune - City)*
Tess. di Ricon. N. Ident. Card. No.

XII. - Continuazione dei III, IV, VI, e XI od altre informazioni - Continuation of III, IV, VI or XI or additional information

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ZONE POSTAL
LEGAL DIVISION
A.P.O. 391, U.S. ARMY

5 July 1944

5AR/1004

SUBJECT : Case of Rosario BENTIVEGNA,

TO : Prosecutor Superior Court,
Palace of Justice.

1. Enclosed herewith final report in the above matter which seems to be most complete in every detail. It is my hope that the information contained in this report will enable you to prepare the case for trial between now and the 10 July, 1944, when I will be ready to convene the Court to dispose of same.

2. If I can be of further assistance in the matter, please do not hesitate to call on me.

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

RCH/Pa.

enclosure:

1 to photo report re. the case of Rosario BENTIVEGNA.

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
APO.394

6th July, 1944.

To: Senior Legal Officer
(through Chief, Public Safety Division)

From: Capt.T.W.M. Greenhill, Public Safety Division.

Subject: Murder of Finance Guard Lieutenant.

1. I submit herewith copies of additional statements of:

a) Second Lt. JANNOTTA Aldo, Finance Guards;

b) Lt. FILIPPI Silvestro, Finance Guards;

c) Lt. ROPPOLI Attilio, Finance Guards;

d) Second Lt. LEPORE Raffaele, Finance Guards;

e) Lt. LAURO Giacinto, Finance Guards;

f) Maresciallo CORBINO Antonio, Finance Guards;

g) Military Chaplain SPILOTROS DON GIOVANNI, Finance Guards.

2. Statements from(a)to(f) in varying degree prove the dress of the dead man, the fact that he was on regular duty, and describe having seen him in full uniform as late as about 1.30 p.m. on the date in question.

3. One or other of the statements describe the removal of the body from the scene of the crime to the Barracks of the Finance Guards in Via Regina Elena, and its subsequent removal to the Mortuary at the Celio Military Hospital.

4. Statement (g) of the Military Chaplain gives an account of the body from the Celio Military Hospital to the family tomb at the Verano Cemetery.

5. I am endeavouring to establish that the dead man, who is alleged to have been wearing one of our police armlets, was actually in our service.

6. It will be noticed from the copy of the statement of the confessed assailant - BENCIVEGNA -already in

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your possession, that he ~~was in possn. on of~~ Rel. k a false identity card and false military certificate. Both of these documents are ~~in my possession~~. He also makes mention of an armband he was wearing at the time. That is also in my possession.

T.W.M. GREENHILL
Captain
Public Safety Division

In the field.

6th July, 1944.

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N.2 /...3.3.

...,23d July,1944.

Statement made by Second Lt. [illegible]
living in Via Flavia 47, (effective) of Royal
Finance Guards, who says:

I saw Second Lt. Barbarisi Giorgio at the Officers'
Mess at about 13.[illegible] hrs. 5th June1944 . He was
wearing the uniform of a Finance Officer, without
jacket, a belt on his grey-green shirt and a white
armband with inscription in English :CIVIL POLICE,
and other words that I do not remember. He had
his revoler in the holster.
I saw him again dead at 16.30 hrs. the same day at
Via Tre Cannelle with the same uniform on. His revoler
holster was open and it was empty.
He did not have his cap on. That was found later, but
I do not remember exactly where. He had an armband
on: white with words written in English.
I participated in the removal of the dead body together
with some Finance Guards, whose names I cannot remember.
I accompanied the dead body with Second Lt. Lauro
Alicandro, to the Finance Guards Barracks in via Regina
Elena.
I accompanied the funeral to the cemetery with Second Lt.
Oliva Vittorini and others, and attended the burial.

(sgd) [illegible]aldo

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Rom 3rd July,1944.

Statement made by Lt. FILIPPI Silvestro, reserve Lieut. kept in service by the Command of the Lazio region of Royal Finance Guards, born in 1914, who says:

I saw Second Lt. BIANCHINI Giorgio on 5.6.44 at about 18.15 hours at the officers' mess. He was wearing the uniform of a Finance Officer without a jacket. He had a revolver in his belt and on his left arm he had an arm band which bore an English inscription "A.M.G. Civil Police". I left him at about 18.30 hrs and he was going through to his billet. I saw him again dead about 18.30 hrs in Via Tre Cannelle with the same uniform on but his revolver case was empty. Evidently the revolver had been taken away. He had the same armband on his arm. He was without cap. I saw it later in a soldier's hand. The body was removed from via Tre Cannelle by Second Lt. JANNOTTA ALDO, LAURO [illegible], ALIGHIERI GIOVANNI and other soldiers, at about 18.45 hrs. and transferred to the Regina Elena barracks.

(sgd) FILIPPI Silvestro

17

1170

A.I.S.S.S.

Rome, 2nd July 19 4.

Statement made by CAPPOLI Attilio, aged 36, living in Via Vicenza 36, apartment 4, Lieutenant of the Royal Finance Guards in permanent effective service; first adjutant major of the command of the ede s legion of Royal Finance guards, who says:

On the night 4th/5th June,1944, awaiting the arrival of the Allied troops in the City,Second Lieut. Barbarisi Giorgio and Second Lieut. Lepore Raffaele together with 150 men were ordered to occupy the Campidoglio.

I again saw Second Lieut. Barbarisi at 15.00 hrs. on 5th June,1944, in Via 4 Fontane. He was talking at the entrance of the Barracks with Lt. Col. Polizzi Gaetano (then Commander ad interim of the Legion, and now on leave at Pinabella Imbaccari, province of Catania) to tell him that he had been ordered by the Allied Military Government to hold himself at their disposal. I congratulated him as Col. Polizzi also did.

He was dressed thus: officer's forage cap, grey-green shirt, without jacket, belt, ordinance pistol grey-green trousers and jack bookts.

(sgd) CAPPOLI, Attilio.

1171

A.M. /A.G.C.

Rome 3rd July, 1944.

Statement made by Second Lieut. of the Finance Guards
IMPORE Raffaele, living at No.86 Via Poerio, il
Magnifico attached to the 1st Battalion of the cadets
legion, who says:

On the night of 4th/5th June, 1944, together with Second Lt. Barbarisi Giorgio and 150 men, - was ordered to occupy the Campidoglio. I later received an urgent order from General Crimi giving me another assignment so I handed over the Command to Second Lt. Barbarisi.

I only saw him again at 13.35 hrs. 5th June, 1944 at the Officers' Mess in via Regina Elena. He told me that during my absence from the Campidoglio he had been put at the disposal of A.M.G. and he showed me an armband he had on his arm which bore an English inscription. I remember only the word "Police".

He was wearing a pair of jack boots, grey-green riding breeches, a grey-green shirt without jacket, and sleeves rolled up, a forage cap, belt with revolver and the special armband on his left arm.

I left him in the officers' mess at about 14.10 hrs.

I did not know where he was going. From that instant I saw him no more.

(sgd/ Impore Raffaele, Ltd.

15

1172

AMG/A C.
Rome 3- ,July,1944.

Statement made by Lt. Giacinto Lauro of the Finance Guards, living in Via Aureliana N° 35, who says:-

I saw last 2nd. Lt. BARBARISI Giorgio at the officers mess at about 13 hours on the 5th of June 1944.

2nd. Lt. Barberisi had on his uniform, without jacket, and had an armband on, signed "Civil Police". He had his revolver in his holster.

At 16.30 hours in Via Tre Cannelle, I saw the dead body of 2nd. Lt. Barberisi Giorgio. He had the same uniform on as I saw him at the officers mess. His revolver was missing. I, together with 2nd. Lt. Jannotta and other soldiers, whose names I cannot remember, removed the dead body to the Barrack at Via Regina Elena.

(sgd)
Giacinto Lauro.

1½

1173

Rome, 3rd July, 1944.

Statement made by Finance Guards Marshal (effective) CORBINO Antonio, living at No.9 via Labicana.

On 5th June 1944, at about 15.30 hrs. I was walking in Via Tre Cannelle when I saw, where the shop Riati is situated, a dead body covered with a sheet, watched by three Finance Guards.

As none of the military until then had given notice to the Command concerned, I immediately went to the nearest Finance Guards barracks and reported the matter to the officer on duty, Lt. Filippi Silvestro, who immediately took the question in hand.

(sgd) Marshal CORBINO Antonio
On duty at the Group "Buildings' Taxes" of the Royal Finance Guards, Via Labicana 9.

13

1174

A.M.P. /A.T.S.

Rome 3rd July, 1944.

Statement of the Military Chaplain SPILOTROS DON GIOVANNI of the Finance Guards (reserve), living at Via Marsala 42, who says:

I saw the dead body of Second At. S.M.B. DEI Giorgio in the infirmary of the Finance Guards barracks in via Regina Elena at about 18.00 hrs. together with Dr. Canganella. We accompanied the body to the Celio Military Hospital and deposited it in the mortuary. After the funeral service on 8th June 1944, I accompanied the body on a truck to the Verano Cemetery and attended the burial in the family tomb.

(sgd) SPILOTROS Don Giovanni.

12

1175

HEADQUARTERS
LEGAL DIVISION
ROME REGION
ALLIED MILITARY GOVERNMENT

3 July 1944

SUBJECT : Case of BENTIVEGNO, Rosario di Vincenzo.

TO : Captain Howell Jones, Prosecutor
Palace of Justice = Rome

In accordance with your assurance of Saturday last a General Court has been convened and will be prepared to sit at 0930 wednesday morning.

Robert C. Hendrickson,
Major, C.A.C.P.
Regional Legal Officer.

RCH/PA.

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1176

HEADQUARTERS
ROME REGION
ALLIED CONTROL COMMISSION,
A.P.O. 394, U.S. ARMY

Legal Division
5MR/1004

26 June 1944

SUBJECT : A.M.G.-vs. BENTIVENNA Rosario di Vincenzo.

TO : Prosecutor Superior Court (Captain Howell Jones).

1. Herewith please find arrest report in the above case.

2. Since I have asked the Chief Commissioner to constitute a General Court immediately for the trail of this cause, it will be clear to you that the case should be prepared for presentation at earliest possible moment.

Robert C. Hendrickson
Major, A.U.S.
S. L. O., Rome Region.

1 enclosure:

10

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HEADQUARTERS
ALLIED MILITARY GOVERNMENT
[illegible] SECTION
LEGAL DIVISION
A.P.O. 394

BENTIVEGNA

5AR/1003

7 July 1944

SUBJECT : Supplemental report in the case of [illegible]CHE, Roberto di Luigi.

TO : Prosecutor Superior Court.
Palace of Justice.

Herewith please find supplemental Police report in the above matter.

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

RCH/PA.:

enclosures:

Bentivegna

1 copy of supplemental report Re. [illegible] case.

23

1178

HEADQUARTERS
ALLIED MILITARY GOVERNMENT
ROME REGION
APO.394

Public Safety Division

6th July,1944.

Subject: Murder of Finance Guard Lieutenant 5.6.44.

To : Regional Legal Officer.

1. With reference to the death of Lt. BARBARISI Giorgio, the subject of the attached papers, the deceased was a Lieutenant of the Rome contigent of Guardie di Finanza.

2. At 4 a.m. on 5.6.44 after hearing that several thousand German wounded in the various hospitals in Rome were being "guarded" by the P.A.I., I directed General Crimi, Chief of the Finance Guards to get out at once every Finance Guard on duty for the purpose of:

a) replacing the P.A.I. at all hospitals;

b) posting our proclamations about surrender of firearms. This was necessary owing to the number of so-called "partisan" who were running about armed to the teeth with armbands,as per attached specimen (red, white and green).

3. Within an hour General Crimi had produced 1200 Finance Guards for duty at hospitals, for patroling and posting notices.

4. He was given authority for his men to wear our official Allied Military Government armbands, as per attached.

5. Lt. Barbarisi was one of the officers deputed to these tasks, and was supplied with the AMG. armband.

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

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1179

Form. No. 4

ALLIED MILITARY GOVERNMENT
(GOVERNO MILITARE ALLEATO)

CHARGE SHEET
(FOGLIO D'ACCUSA)

Place
(luogo)

Date
(data)

Name of defendant
(nome dell'accusato) Bentivegna Rosario

Address
(indirizzo) via Lucrezio 122 Roma

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

First charge Responsable of the offence contemplated by the art. 575-61 n° 10 Cod. Pen.

Particulars. For having Killed in Rome the 5th June 1944 by three shots of pistols the L. Ten. Guardia di Finanza Giorgio Barbarisi

Second charge

Particulars

TRADUZIONE

Prima accusa Colpevole del reato di cui agli artt. 575 e 61 n.10 Cod. Pen. Fol.

Dettagli Per aver in Roma il 5 giugno 1944 ucciso con tre colpi di arma da fuoco il S. Tenente 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 Questura).

The above charges are referred for trial before General 24
(name and address of Court)

(Le suddette accuse sono riferite a processo davanti
(nome e indirizzo della corte)

By order
(Per ordine)

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

REGION IV. CASE N° 7762

1180

FOR RIGHTS OF DEFENDANT SEE REVERSE SIDE OF THIS SHEET.

EVERY DEFENDANT BEFORE AN ALLIED MILITARY COURT IS ENTITLED:

(Ogni accusato di fronte ad un Tribunale Militare ha diritto:)

A) To have in advance a copy of the charges upon which he is to be tried, if he so desires.

A) Di avere in anticipo una copia delle accuse sotto lequali egli sarà processato, se egli così desidera.

B) To consult a lawyer before the trial and have a lawyer defend him at the trial, duin any case involving the death penalty, the General Military Court, if the defendant so requests, shall assign to him a Legal officer of the Allied Military Government to assist him in the defense of the case in addition to such other lawyer as he may select.

B) Di consultare un avvocato prima del processo e di avere un avvocato in sua difesa durante il processo. In ogni causa che porta con sè la pena di morte il Tribunale Militare Generale, se l'accusato lo richiede, gli assegnerà un Ufficiale addetto alla Giustizia del Governo Militare Alleato per assistere nella difesa della causa oltre a tale altro avvocato che egli potrà scegliere.

C) To apply to the Court for time to prepare his defence, which application the Court may grant or deny in its discretion.

C) Di fare richiesta al Tribunale per ottenere un periodo di tempo sufficiente per preparare la sua difesa, richiesta che il Tribunale può concedere o rigettare a propria discrezione.

D) To bring with him such witness as he may desire or have them summoned by the court at his request.

D) Di farsi accompagnare dinanzi al Tribunale da testimoni a sua difesa, se così desidera, o far richiesta di farli comparire per ordine del Tribunale.

E) To give evidence on his own behalf at the trial, but he may not be compelled to do so.

E) Di fornire evidenza a suo vantaggio durante il processo, ma non potrà essere costretto a fornirle.

F) To have the proceedings translated for his benefit when he is unable to understand them otherwise.

F) Di farsi tradurre i procedimenti per il suo beneficio quando egli non è capace di comprenderli altrimenti.

1181

TIP. A. DE VITO - TEL. 27538

Giudice Carlo di Maio
Via Monte Zebio 43 Roma

Carissimo Carlo,
il latore è il Tenente avv. Sabatino
magistrato come noi. Egli avrà
urgenza di fare qualche visita ai Giudici
e ai Pubblici Ministeri di Roma per la
presentazione degli uffici giudiziari civili
e penali e tutto ciò che siamo soliti
fare in simili occasioni. Ti prego usargli
quell'ospitalità che è nel tuo stile.
Ti abbraccio tanto
tuo
Giovanni Falcone

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GENERAL COURT

A.M.G. v. BERTIVEGNA ROSARIO di Vincenzo

WITNESSES FOR PROSECUTOR:

Dott. FONTANA Mario, Istituto di Patologia, Università

CASTELLI Alberto, Via XX Settembre 98 E

RONCUBI Anna, Via Tre Cannelle 15

PANETTA Giorgio, Agente P.S. Questura Centrale

Lt. PASQUA Pietro, Legione Carabinieri, Nucleo Ludovisi

CAPPONI Carla, Foro Trajano 1

~~1st Lt. JANNORTA Aldo, via Flavia 47~~

Lt. FILIPPI Silvestro, Comando Legione Allievi Guardia di Finanza

~~Lt. RODOLI Attilio, Via Piemonte 39~~

~~1st Lt. LUPORI Raffaele, Via Lorenzo Il Magnifico 86~~

~~Lt. LAURO Giacinto, via Aureliana N. 35~~

~~Maresciallo COMBINO Antonio, Via Labicana N. 9~~

~~Mil.Chapl. don Giovanni SPILOTROS, via Marsala 42~~

WITNESSES FOR DEFENCE:

Dott. NEGARVILLE Celeste, "Unità" via IV Novembre

CAPPONI Carla, Foro Trajano 1

Countess GALLETTI Isabella, Via Tre Cannelle

DE TUDDO Italo, Via Flaminia 19

Mr. and Mrs. Dott. MUSU Domenico, via Orazio 31

CAPECCHI Bruna, Salita S. Nicolò da Tolentino 1

2R

GENERAL COURT

A.M.G. v. BETTIVEGNA ROSARIO di Vincenzo

WITNESSES FOR PROSECUTOR:

2 Dott. FONTANA Mario, Istituto di Patologia, Università

CASTELLI Alberto, Via XX Settembre 98 E

4 3 RONCUBI Anna, Via Tre Cannelle 15

PANETTA Giorgio, Agente P.S. Questura Centrale

Lt. PASQUA Pietro, Legione Carabinieri, Nucleo Ludovisi

5 CAPPONI Carla, Foro Trajano 1

~~1st Lt. JANNOTTA Aldo, via Flavia 47~~

1 Lt. FILIPPI Silvestro, Comando Legione Allievi Guardia

~~Lt. BOTTONI Attilio, Via Vicenza 38~~ 86367 di Finanza

~~1st Lt. LEPORE Raffaele, Via Lorenzo il Magnifico 86~~

~~Lt. IAUCO Giacinto, via Aurelia n. 35~~

~~Maresciallo CORBINO Antonio, Via Tavolara~~

~~Mil. Chapl. Don Giovanni SPIRITOSO, via Cavour 42~~

Fusini G.A. Battersby

WITNESSES FOR DEFENCE:

Dott. MECARVILLE Celeste, "Unità" via IV Novembre

CAPPONI Carla, Foro Trajano 1

Countess GALLETTI Isabella, Via Tre Cannelle

DE TUDDO Italo, Via Flaminia 19

Mr. and Mrs. Dott. MUSU Domenico, via Crania 31

CAPECCHI Bruna, Salita S. Nicolò da Tolentino 1

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1184

A.M.G.Superior Court-Rome Area
Palazzo di Giustizia, Rome

Rome, 8 July 1944

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

SUBJECT: A.M.G.v.BENTIVEGNA Rosario di Vincenzo

1. This case has been set down for hearing on Wednesday 12 July 1944 by a GENERAL COURT A.M.G.

2. Will you please arrange for the attendance at the trial of all witnesses together with the necessary exhibits.

Howell Jones Capt.
Superior Court Prosecutor

1185

A.M.F.Superior Court Rom. Area
Palazzo di Giustizia,Roma

Roma ,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 this 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 Prosecutor

Enclosure: Copy charge sheet

1186

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

Statement of BENTIVEGNA, Rosario, age 22yrs.
Via Vincenzo, 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 so 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 Political grounds. I was taken to the Questura in Collegio Romano

Bentivegna Rosario

1187

and was interrogated because they found out that I ordered on 5th May. 1941, in distributing Anti-Fascist bills. They kept me for four or five days and released on the condition that if I was caught again circulating this propaganda within three years I would be imprisoned. After about eighteen months I again started my Communist activities. During the eighteen months I took up my medical studies. In February 1943, because of my age, I was called up for the Army and was put into a Sanitary Company, No. 8. and remained in Rome in the Military Hospital at Celio. I was there until May 1943, when I was released for an indefinite period. I was still interested in Anti-Fascist and in July 1943, I again contacted my Communist Comrades. We could not become active openly, so I became an active member of the Communist Underground Movement in

K

1188

Rome. My area was on the Coast of Rome and I was the Area Commander. I held the position until 15th November 1943, when I became involved in the G.A.P. which means Gruppo Azione ~~Patriotica~~ Partigiana, a part of the Communist Party, and was the Commander of the "Pisacane Squadron". On 22nd January 1944, when the Allies landed at Anzio I was sent to Cantocelle in charge of the Partisans there. In March I was recalled to Rome and again took up my previous Command, and have been here ever since. In May, 1944, I was sent out of Rome in charge of the Partisans between Rome and the Cassino front. I returned to Rome on 2nd June 1944 to make a report to my headquarters. On 4th June 1944, I

From G. Capt

1189

was on my return to Casino from V.R.
leg 4th Black troops near the Ponte
Mammolo about 10 kilometers
outside of Rome on Via Tiburtina,
and owing to the fighting I returned
to Rome and took up service with
my patriots in the San Lorenzo
district On the morning of 5th June
1944, I was sent to guard the
building of the Unità newspaper
on Via 4th November, ~~Piazza~~ Nazionale Road, near
Via De Cannelle. I arrived there at
about 10:30 am. At about 3 pm,
I walked into Via De Cannelle on
a tour of inspection and saw two
men, one in civilian clothes and one
in uniform who was carrying his
coat over his arm. It was an ~~officer~~ Italian officer's or non commissioned officer's
uniform, and I did not recognise
what arm of the Italian services he
belonged to. These two men, I do

Lt Col Capt

1190

tearing down posters from the
wall near the steps leading from Via
Del Cannelle to Via 24th May,
including posters of the Malta
newspapers. 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 had
upon is the one I was wearing. At
this moment the man in uniform
pulled his revolver from the back
of his belt a calibre 9 mm

Mario G. Cappi

1191

struck the revolver in my body
near the heart I had my right
hand in my trousers pocket, holding
a loaded "Bassetta" 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 shot 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
Urbanza. my good friend was Lieut.

1192

And she saw all that happened.
There were people also at the windows
of surrounding houses. I did not
know the uniformed man or the man
in civilian clothes. The girl and I
kept the public back shortly afterwards
A man, who I assumed knew a com
wearing a white armband with "Police"
(he had white and green in cockade) (Lit.)
on it, came up and asked (me P.S.) what
happened. I told him and he asked
me for my name and documents. I
showed him my 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 ~~five~~ twenty
~~ten~~ minutes, and returned to the
Questa building with the girl, Carla,
and the man who had taken
particulars from, and he verified
my identity. I left Rome on 5th

Witness's Copy

1193

June 1944 and work at the Vittorio Ustorei I stopped there until 19th June 1944, doing Communist work, and then returned to Rome. I hand you the false identity card and Militari 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 think the Lieutenant he could be had held this pistol to my body. At that

Exhibit 4 Cont.

1194

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 fake 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/s and it is the truth. Rosario Bait 1095

Witness Thos Tullenhall. Capt
24/6/45

1195

art.6I Nº10 does non exist.

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

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 not 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 ne= cessity,it is punished as an involuntary crime (Art.55).

PUNISHMENTS. The wilful homicide is punished with a period of imp= risonment 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 dimi= nished 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=

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).

1197

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.

1944 Napoli R. Tip. Giannini

128

To Peter

Kindly request
can Record.
of Rosario Santuccia

367

1199

Mun. Prot. } Cats.
1T. Cats. }

I Cent. / Conf. di
nascite, battesimi,
cresime, cittadinanze
stati ll.

1200

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 office's mess, in via Regina Elena, Rome. Some other officers were with me. I remember 2/Lt. Lebro was there, also 2/Lt. Iannotta, also Lieut. Icalzi. There were others, but I don't remember who. 2/Lieut. Barbiasi was also there. I had known him since October 1943. He was in uniform, without a cloak; he had on his head, and a white band on his arm with word in English written on it - except that I saw "A.M.G." on it. I spoke with 2/Lt. Barbiasi. I saw him again that afternoon. About 1600 hours I was in Bolzano when I was informed by a barracello that 2/Lieut. had been killed. At 1630 I saw Barbiasi in Via Tre Cannelle. He was lying on the ground dead and covered with a blanket. My colleagues had examined the body. I did not remove the cover myself. I never saw his face. When they raised the body a little it was by the uniform and by the colour of his hair.

No XXXIV

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Second witness (Sworn)

Fontana Mario Luigi, Assistant at the Pathological Institute. I am a police medical practitioner. I saw the body that day I was informed by Capt. Greenhill to carry out an autopsy. I was told it was the body of Lt. Barbiasi. It was a man of 25-26 years old. It was the attendant 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 haemorrhage which penetrated in the top part of the right lung

1.

1201

2/ the thorax is over 2 cm. from the sternum; on the left interscapular space [illegible] 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 only. The autopsy was limited to the thorax and the abdomen, because when I found that fully explained the cause of death. We stopped the body completely upon examination.

No Reaction.

~~Later~~

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.

Read (with care)

True as a record of evidence, and a record of facts.

(Adjourned 1200 - 1330 hours).

1202

Third Witness. (Sworn)

Lieut. Jamaica Alto, 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. Barbisi were with me. I saw Barbisi again that afternoon. He was dead. I saw him about 1615 hours in Via Tè Cannella. His body was on the ground. I saw his pistol and recognised it as that of Lt. Barbisi. The body was covered by a blanket - I cannot say whether the body was rigid, or all appearances he was dead. I had walked to Lt. Barbisi that afternoon. When I saw his body in the street, he had boots, trousers, shirt, belt and a band - 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 nor his coat in Mess. The blouse must have been there near the body, because when they removed the body one of them 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 up. The sleeve was rolled up to the elbow. He knew Lieut. Barbisi by sight, 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 organisation, and I believe that enquiries are being handled now by the Armed's notice. I heard that letter from Armed's notice. I have seen for certain if the articles mentioned have been returned to us. The one I did see from the Armament who took

1203

delivery, we pass the accused's motor. We see one man in the shade of Lt. Barbisio's house. I examine the house - the hospital where we took the body, and I found in the grounds. If there were bullets in the house I should have noticed it. There were other words besides "Civil Police", but I don't remember them. When I saw Lt. Barbisio he was wearing his belt and holster, but I did not notice whether there was a pistol in the holster. I believe that the witness was dressed with the shirt; I found that his uniform was buttoned in the proper way in keeping for his position and pressed in the proper way for the shirt.

No Rexton

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 Pilota. A civilian passed me (I think is was a civilian), who said "They have killed a Fascist Consul". I asked him why and he said "Let's go and see what has happened." I went to Via Te Cannetti. Before arriving I saw an assembly of people standing around. I shouted with my arm to ward away, and made my way through. I saw the accused there. I was told from via IV Novembre and heard shouting coming from me - the body be- fore me. 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 is killed?" The accused answered "I have killed". I don't know the accused's name - I speak of the accused as I enquired him by the name I spoke to. I also asked the accused "Why?" He replied "Per Legittima Difesa."

1206

I cried him to give me the pistol. I agreed, because he said he had settled in self defence. He said he had acted in self defence, because the Lieutenant had drawn his pistol. He told me when the accused had fired at him with his pistol, there was another civil in line who would have fired. He told me he told the Lieutenant to stop firing from certain motives. The position which the Lieutenant was trying to take from me is shown in Via Tè Cannelli: Key me shown on plan, but the glass is missing. I have inserted glass cases, but the glass is missing. There was one of the persons that accused shot at me. There was with the accused a girl who, the deponent 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 wearing his blouse — it was thrown on his shoulders, & if he had fallen that way. I noticed on the left sleeve of his shirt a band with some writing 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 Emblem 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", & I did not wish to go and with smoking the had been ordered to another officer. As the deceased lay on the ground, his arm had worked up. I did not see his sleeves nor collar 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 ground was obscured partly by the blouse, and partly by the position of the arm.

1705

XXd

I don't 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 incomplete, as
the Captain had been dealt injured. Accused did not
sign on a "Volontario della Libertà", but I said that he
was by his own hand. I believe it was a red hand, with
the letters VL. I was not too interested in these par-
ticulars — what interested me was that he should re-
main there. I did not enquire him as a Volontario
della Libertà, as I simply asked him for documents
to prove that he had the right to wear a hand. He had
no documents, nor did the young girl with him.

No Question.

By the Court

I believe the position was in Italian, but I am not
sure, because I did not observe them. Rome was full
of posters at this time closely.

Fifth Witness (Sworn)

Signora Ronchi Anna, Via Tè Camilli 15. I am a
housekeeper. On afternoon of 5 June I was in my kitchen,
when I heard a conversation. I went to the door of my
house. I saw a young man talking. I could not
understand what they said. As I watched I heard a shot,
and saw the man fall to the ground. I did not under-
stand, as I was scared, being a woman, & I thought
my son might be there. I for called to him & I
saw the boy [illegible] to the ground. I did not under-
stand, because they were a bit distant, & I could
not hear well. I did not recognise who it was.
One of the men was talking - the other I cannot swear.

1206

an individual who, in keeping with custom, was leaving
door postings at the last place he was in the building.
They are on the part of the wall which faces Via Tè
Cannelli (marked by crosses on attached sketch plan).
I then went with a □ to the door of the building from
which I came out. (Sketch plan attached to Record
and marked Exhibit 3). I did not recognise the two
individuals. One individual, slightly to the rear 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 don't think he was removing posters. There was no
glass in the shop windows. The second man was dressed
only in civil 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
recognise him as an officer, or 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. I knew the
same uniform — that was for sometime by Italian
officers and officers of the Milizia — officers and
non-commissioned officers. His coat was folded and
had been carried over the left part of the arm, and
covered the upper part completely. I don't know
which side of the coat was folded. The
military man was not armed. He seemed surprised

1704

or my "Luck" as I turned to leave my. He turned and addressed me in a most improper manner. He said he could do what he liked - in my case for I should say who I was. I replied rather angrily that I was a volunteer officer, and I should like my hand. Both I was now somewhat excited. As I entered 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, for presently 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 troop. He rested his pistol on the right of my chest, 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, without safety catch, and the percussion pin cocked. In that position all that was needed was a slight pressure of the forefinger between my finger to put the percussion pin in a firing position. While the military man was drawing his pistol I had already made what I was determined, in what to be prepared for the unexpected. At this point several things happened in a very short time - I don't know if successive, or whether they were dependent on my

1208

security [illegible]. I was called up, military service in January 1943, and discharged for [illegible] in May 1943. In November 1943, I became a member of the Partisan groups (GAP) under auspices of National Committee of Liberation. I was a member of GAP Pisacane. The GAP were very light squads organized by the parties 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 Centocelle partisans. I returned to Rome in March, when the arrival of the Allies was no longer near, and resumed command of GAP Pisacane. I left to leave Rome to go to partisan zone in early May. I returned to Rome on 2 June to bring a report to my superiors. My command was the military organization of the Committee of National Liberation, working in accord with Allied military authorities. I was sent to Cassino and Frosinone by GAP commander, and I have carried out activities for liberation. On 4 June, when the arrival of the Allies was considered imminent, my command sent me to the Partisan zone. I left at 7.30 p.m. Tuesday 11.00 a.m. on Via Tiburtina, I saw Allied formations, accordingly returned, considering that my mission was no longer valid. Returning to Rome, I began to work with my Hdq., I made contact with my colleagues of San Lorenzo District. On the night of 4-5 I was ordered by my GAP activities for security and order in the District. On morning of 5 June I left my companions of San Lorenzo, and went to seek for my commander, for I knew I could find [illegible] 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

1209

L'Unità, which was also the Hdq. of the P.C., was crowded to capacity for 2 days and nights. I did not move from Via Quattro Novembre and its surroundings, except that on a few occasions. I did not see Allied Proclamation posted in Rome. On 5 June I was commander of the first group entering the building of L'Unità. One of my officers gave me this mission. The building is on the corner of Via Quattro Novembre and Via Tre Cannelle, opposite the Via della Cordonata. There were several posters around the building, calling the arrival of the Allies, the liberation of Rome, the Allied Forces, the anti-Fascist parties and the Communist party. Posters were of various colours — "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 — now, with my shirt collar open and over my coat. I was wearing this suit. I had a very small beard on my chin and moustaches which had grown from the end. 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 on that occasion. The band was given by the National Committee of Liberation, & members of whom were known by the leaders of the Committee. In the afternoon of the 5th I made proper visits of inspection around the premises, but did not leave the vicinity. At 3.0 p.m. I made a second inspection. I went on through the main entrance on Via Quattro Novembre and reached my group around Via Tre Cannelle. Carlo Pasquini was with me. I did not know of the two who accompanied me. When I arrived via Tre Cannelle I saw beyond the "Albos" of the Stucco

1210

and no witness has suggested that any words were spoken to show that the accused 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 (i) that the defence put forward under ~~Art~~ Art 52 of the PC has not been fully made out: & (ii) that ~~In the view of the Co~~ the accused ~~that~~ did not ~~com~~ 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 584.

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). ~~It~~ ~~Of~~ 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 opinion any doubt must, as 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

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

If the Defence so desire 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~~ ask the Prosecutor if he has any evidence of previous convictions to adduce.

1212

4.

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Exhibit 3
H.L. Hoffmeister
Colonel

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Exhibit No.4.
H.C. Smith
C.S.I.

15

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

25th June,1944.

Statement of Carla [illegible], 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. In 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' newspapers 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 struck 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 leaving both the man in civilian clothes who was standing 2 or 3 metres away and the revolver from his right hand trouser pocket. At the same time I called out "Attention" and moved quickly over to the left of the uniformed man. I thought this man had a revolver. As I moved Rosario took a step back from the uniformed man. I saw the man in civilian clothes [illegible] I did not see what he did with his right hand. I did not see the uniformed man [illegible] to the ground and fell dead. [illegible]

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waved his revolver by his head. At that moment the civilian fled away in the direction of Via Mazzone. When that a man in civilian clothes, with a police armband came on the scene from the direction of Via Novemore. 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". He also still held the revolver 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 Tenente of the Guardia 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 Guardia 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 disappeared. I asked the policeman and later the Guardia di Finanze whether they had picked up and they all replied "no".

I had no hand in the shooting of the Tenente of the Guardia 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 Bartoli and it is the truth.

Carla CAPPONI

T. H. Greenhill, Capt.

25.6.44.

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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 firing 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 & likelihood of the witness. Having heard all (and weighed)

1216

the Incident, it has been possible to form a fairly clear View of the main events of what happened. The Court is satisfied that the accused, seeing the deceased coming down the passage, addressed him in an arrogant & hostile manner: that the deceased replied in an equally hostile manner; that the latter is proved to have 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 the 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 attempt a "fatto ingiusto" within the~~ ~~s.2 (2) of the~~ 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 ~~he~~ 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 appear 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

1217

(In answer to a post in by the Court I Prosecuting Officer shall
how he does so in and a plea "extenuating circumstances" under
. Art. 61 (10)).

As to extenuating circumstances - I say this second is wholly
faithless, but submit in duty I ought - Art. 62 (1) and (2).
My defence is based on s. 52 - I submit s. 55 or a possibility.
s. 52 is designed to deal with certain charges, not to extend
physical damage, and the certain must be immediate.
I question whether I can rely on s. 52 that must be extend
necessity. This needs very delicate weighing,
raised subjectively, as it appears to the court objectively in
the light of surrounding circumstances, and not objectively in
the cold atmosphere of the law Court - see Art. 59 & Art.
52 and provide a good defence, which standing for the
Court considered to necessitated deliberately, right in the
circumstances that presented themselves to him - the
error was justifiable. The collateral legislation defines
error (principle). But the
Particular - it is covered by Art. 59 (last paragraph). But the
accused's error must be unreasonable error. If he is guilty
unreasonable error, then it is a case of "culpa", to which
we turn to Art. 55. This is considered by the Code specific-
ally in relation to Self-defence, under Art. 55. Art. 55
only in relation to Self-defence, but this case
appears only to cover [illegible] Self-defence. If, this case
the punishment is fixed by Art. 59. Civil action is
limited by the limits set in the section - but Civil certain
cases there is a power to suspend sentence (see Arts.
163 and 164). 115

All this is standing, means I rely on legislation self-
defence, and not on "culpa". Legislation self defence is
defence, and not on "culpa". But I also appeal
to P.P. Maggini, Vol. II, p. 320, (2nd Edn), which carries
a footnote dealing particularly with "legislation defence
putative". I also rely on "Giurisprudenza Penale" by

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Sinibaldi e Jannitto p. 149 – which appears – since that is cited by "parties" self Appeal. I also refer to an Article by Prof. Stallybrass in "Il Progetto Rocco nel Pensiero Giuridico Contemporaneo", at p. 77.

In order to avoid confusion you must pay great attention to this distinction. Mistakes could have very different results.

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

(In answer to question by the Court as to whether would be in the province of Barbarisi and Piccinni and Vitale Bentivegna). That might be a case of "Reciprocal" Self-Defence, as envisaged by the writer Ferri.

– Lieut. Salvatino sums 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 how any of the witnesses we have – this is the peculiar case of a number of people seeing the same thing happen but getting different reflections of the details.

There are 3 possibilities:–

(1) Accused convicted & Deceased acquitted if both either giving the same version:

(2) Deceased believed evidence of Appellant, who lied in self Defence:

(3) Deceased believed evidence of accused, and the latter lied when he said both lied to protect them.

Accused acted in some Reasonable way to protect his position, as he thinks being threatened – and decided in a proper manner. He thinks he will have acted in a calculated way if he had been threatened. That is quite clear by the fact that he was pre-emptive, and then the deceased was disarmed.

For you then the position was

1219

Adv. Nielsen's summing up for the Defence.

You have to resolve any doubt in favour of the accused. We don't put this case forward as an incident of war - but I shall show that it took place in an atmosphere of war, & that affects the valuation of the conduct of the parties.

At times the Allies had entered Rome, wrongly but we returned to Rome, and it was not even certain that the last German had left.

It is a mystery why Barbarisi should in this day be guilty of an act so hostile to liberty as to turn down these persons. Accused's motive was financial wealth, politically, financially. I don't say that this alone would justify killing, but it justify accused in being offended, and even in insulting others.

But it is necessary to examine the motive of Barbarisi. This is a question on which there is a conflict of witnesses. You should accept the evidence of Carlo Coppini. You should accept De Tuddo, who was completely independent, who has. and has. brought; whose spontaneous motive was so clear. Also the evidence of Colantonio. It is not we submit that we could not support his evidence with that of this prisoner friend. Maybe there are various features in his story - but no more various than other things in this case which are generally admitted. There is no — about Colantonio's sincerity. There is plenty of corroboration for his story with the American officer now dead. The evidence against him could is not acceptable.

(Captain Greenhill enters having the missing statement, which he states has been found in the office, in [illegible] wrong file. Court asks that this be done & the Deputy, who may not be in evidence to say what he did so.

Deputy after seeing the document does not think it is evidence. Document ruled — and marked Exhibit).

Avv. Nuvolej continues

The witness Castellana was evidently hostile to us for some reason. You cannot believe her story. Nor the thing — nor the story of three witnesses would have Lia Barbarisi. Even the evidence of this witness, however, supports my defence of legittima Difesa.

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 by Barbarisi upon their interview Tuesday immediately afterwards. The original report, was produced, is contrary to his, 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 startled, from the loss of the diamond, when he was freed so far, — his actions would suggest the latter. I don't think that he intended to harm by drawing his pistol.

(Adjourned 1900 hours)

22 July 1944.

Court re-assembled at 0910 hours.

Avv. Nuvolej continues

The experiences suffered and witnessed in Rome 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 intentional killing but counters notion only to avoid a danger.
Homicide may be (1) voluntary
(2) Preterintentional (intending harm)
(3) Colposo (negligence or imprudence)
Legittima Difesa 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.

1221

how soft I appeared in my experience. I have not made my investigations because of this decision but for the military police officials. Usually a person who has a statement to make will be shown in to me, and not left with an Italian Statement officials. 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 Alexandria and Lowestoft) That does not bring out any incidents like that.

2nd Lt. Sabatino

Nor do I have any Italian P.S. officers in my office - called Rodrigues. I don't think I should take a statement like that Casually in a case like this. No other Allied Captain took any active part in this case.

2nd Asst. Procurator

I know the name Pantia. He was involved in this case, acting under my instructions. He was present at the investigation at the mines. Pantia may have seen this man come with a statement, but I have not asked him. I have never had the Commissario Luigi Napoli. I do not remember receiving a letter from him.

Second recalled Examination Statement

I did not immediately move towards Alexandria, having to disembark, but after a little time when Lieutenant was already on the ground. I went to meet Alexandria, because nothing was allowed civilians I wanted [illegible] see another representative to talk with to. I suppose that he was there. When I saw that had with "Polizia" on it I was upset + in complete disgust. He took my pistol in his hands, he examined how my mines were missing from the clip, and he counted that 3 were missing.

1222

As already stated, he told me [redacted] he ( ) and 5 shots. When my companions did come out to take me prisoner, I ordered them back to their posts. I and Carlo Coppini 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 8th I was at the Allied Command, waiting to begin with Capt. Grenfell, Alessandri did bring in a statement, which was read by Pancetta. I believe it was presented to Captain Grenfell. If I remember right, the signed Pancetta at the interpreter hangs the statement in to Capt. Grenfell; it was on half sheet, folded and written on both sides.

And Lieut. Sabatino

I don't think I said "Italians, this is how Fascism dies". I don't remember doing so, and am almost sure I did not. I remember that the three guns, after a minute or two, began to shoot for the pigeons. Many people were near the body, and I with others were trying to keep order and keep the people away. Alessandri was one of the first persons to go near the body. I don't know who was. Alessandri handed me - a companion I had not seen him before that afternoon. I don't know what party he belongs to.

Read

Alessandri and I went together by automobile into the Littorio Building. I remember talking to Terenzi. There were quite a few people there already.

1223

I was in my office when I heard some shots. I went down stairs and proceeded going towards Via Tè Cannelli, and I expected to see the accused in that direction. I saw a young man in shirt sleeves in the ground. I did not see the accused in the confusion. I did see the accused about 20-25 minutes after the incident. Later that afternoon, about 20-25 minutes after the incident, I saw him in his office. There was a small purple book, identity - Volunteer Patients who was waiting for his identification. I enquired the last witness - the Volunteer Library. 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 by me that someone had entered portion. The Volunteer Library Inspector Accused by the book identification, and I was able to identify him. The accused told me that in the street he had seen Lt Tenente coming down portion from the north; that having noticed this person to stop, the latter had entered in an irregular manner and had drawn on his pistol; that in order to defend himself he fired him - that is what I remember. The Volunteer Library was present when accused told this story. I am quite sure the accused told me this story. 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 he was passing by the time when pistol shots; he told me that he saw and heard what 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 killed any one in the incident. What he said was that he was passing at some distance.

1224

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 accused. So far as I am aware 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. This did not appear to be my contention. 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 this morning, nor at any time during this trial.

Capt. Gerrard recalled (xd by Court)

I have not seen Alexandrini Virgilio since 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 & they, 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 do not 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 — 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

1225

seemed dead. When I arrived, I saw nothing, but
then in my presence he made some motions. I did not
notice that Barbisio was in ambush. I did not see one.
I did not examine Bertinaria's pistol. I did not take
it in my hand, nor know whether he showed it to
me. I do not remember if he showed me the missing rounds.
I do not know who picked up the shells from the ground. I
did not touch the body or move it at all. I bent down
slightly over the body. I did not think I examining the
body. I did not notice if Barbisio had a holster — or a belt.
I did not check up on the pockets. There were few people
when Bertinaria died & arrived on the body. On arrival we
cleared them away. No one was on the scene before me.
I did not see anybody approach the body before me — it is
possible they arrived. I did not see my Finance
Guards approach the body. When Barbisio was hit he
turned [illegible] - [illegible] fell back. He was lying
turned towards the street. There were passing
by [illegible] L'Unità building, & the street among it was
[illegible] their windows [illegible] Before the shots
I saw nothing. I do not know what happened & the
people after the officer took the photographs. I did not
see if the Jeep came back. I saw the officer
[illegible] Guard the Jeep, but I did not attempt to
go in. I reported & the Commissione Mobile
Napoli in the name of the I power & A.M.G. I
was told by [illegible] my Captain told me this. My
Captain is Dell'Aste Filippo. He was [illegible] captain
2 years ago. He was not present at the incident.
He was sent for by I attempted Bertinaria &
the newspaper office. I agree it was only a the
23 [illegible] I reported & the P.S. of A.M.G. Up.
& then I reported only to my captain. I made

1226

a written report of what it is they say in 3-4-5 days afterwards. I can't do it by memory because I read in the "Avanti" this morning that the man photographed containing a bomb with an automatic sight, and I was the only person concerned I thought I had better come here. But for that article I should not have come.

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

Mr. Salvatino

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 shall not object. I do not make any distinction between my wife & me. But I insist that we should know beforehand what is to be asked.

(Adjourned 1230 - 1400 hours)

Court rules that at this point 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 have the right to go back into the witness box and make a statement, restricted however to those matters which are 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 Doglino 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 waiting for instructions. I saw the accused for instructions. I saw him several times. An incident took place outside our office for instructions. I was not a witness myself. But the incident was reported.

1225

Commissariat Piazza Nazionale, and then with an accompanying letter from the Commissariat I went to Piazza Venezia. I was told by an Allied Sergeant it was too late that morning and I was to come back at 1430. It was more than 4 days later. Commissariat Piazza Nazionale is a District H.Q. of Public Security. When I was in Piazza Venezia, I found Bertinaria. I also found a plain clothes Italian police agent, and I showed him my report, and he asked for a typed copy. The girl typist said she could not type it as she had no notes. Then the Captain to whom Bertinaria was to report came in. Bertinaria & the P.S. P.S. agent went in to the Captain. Later the P.S. agent came out & handed to my statement. I gave him my statement & him. He took it into the Captain, & was to return. I asked for a copy & a receipt & it - but the agent said the Captain said there was no necessity. I still had the accompanying letter. I waited & the Captain came out & ... I called the Captain's attention & him & the letter & me to interpreter & asked him & him in the letter & me to wait. He returned Captain said I was to go & wait. He returned & said the Captain thanked me & would call me again if he needed me.

xxd Aur. Persio

On 5 June, at 2.30 - 3.0 p.m., I was near & via Tè Cannelli & via Quattro Novembre. I [illegible] standing still, and alone, waiting for my Captain. I was alone for about 10 minutes. I was standing still at the same point, only a little walking, looking me & was in the same direction most of the time, until the Allied troops in via Quattro Novembre. I saw the armed people going by. I did not notice Bertinaria pass by, & Bertinaria [illegible]

71. REGION IV CASE No 7762

I heard an excited conversation – not a row – 4 voices. I heard 2 or 3 people, possibly even four. I am a Unionist, not a policeman. After firing Buttrick stepped on the pavement with pistol 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 run towards me. I was going a - four step towards him. I met him 4 or 5 metres from the body. As soon as we met we spoke. The first thing that came to my mind was to stop Buttrick – then he came with me to the body. I was wearing a white band with a tricolour strip in the middle. Buttrick's hand was on my tricolour. I was visibly armed. I had an automatic rifle. Perhaps Buttrick considered me a policeman, perhaps not. I asked him for his weapon. It was then that Mr Coppin came up. I could not wait for him so I was alone. The man said to help: I did not release Buttrick to be in a state of arrest, or in a state of "fermo". If it were possible I should like to tell him. I did not give him at this moment for their reasons. At once did not show me his false documents, but he told me who I am. He still had not gone to the body of Buttrick. It was 35-40 seconds from the shooting to the time when I actually met Buttrick. From the time I met him to the body was 20-25 seconds. It might be more, I don't know how much more. A long time has now passed and I cannot remember how long it was. It might be 1½ - 2 minutes. Buttrick was wearing a grey-green shirt – I did not notice anything in it. I don't remember his shoes now. I did not recognise if he was an officer. I don't remember if he wore a belt. When I approached the body, it

1229

Some people ran, we ran, but my attention was fixed on these two. I cannot say whether any of the others were firing or not. Nobody else fired. Buttiglione was alone. I recognise Carlo Coppini - she came to me when I was with Buttiglione, as soon as I stopped him. She was coming down from Via Tè Cannelli. I cannot say if she was there at the time of the shooting, nor whether she was with Buttiglione at that time. To me Buttiglione seemed alone. I was a little perplexed, but then I began to turn towards the scene, and I stopped Buttiglione. 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 leaving from the position of L'Unità". He made a gesture to give me the weapon, and then drew back and said "No, I will not let you disarm". I said "That's quite all right - for it is here in your power." As soon as he put it back Signora Coppini approached me. She was armed with a pistol, carried in a belt. I asked him Buttiglione and then Signora Coppini for their documents. Buttiglione told me his documents were false, because he was being searched for. Signora Coppini had no documents. I asked what duties they were performing, & Buttiglione told me he was doing duty for L'Unità, and I took the No. of his card, 6577. Signora Coppini had no card. Then I accompanied them to the newspaper L'Unità. Before going, I saw there a [illegible] person with two hands similar to mine, and I had the people leave from the scene. 2 or 3 companions of Buttiglione participated in this. As soon as I stopped Buttiglione I went towards the body, and at that moment the man fled. 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 the body

1230

his head. If the 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 Monsignor of Lanciano in uniform, and I asked him to return an interest, but he said he had 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 armband, 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 Tenagi presented himself. I made a report to him on what had happened. Tenagi did not put him under arrest. I left them there and came away.

xxd Lt. Sabatino.

Bentivegna came towards me, fired in the air, and he said "~~~~ Romans (or Italians), go 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 off Via Tre Cannelle Signorina Cappai was. I did not see anything of the fighting with any one. He did not appear to try to say anything to me. When he fell he tried to get up, but fell back in 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 after I had seen. I first went to

1231

The Court directed that it would not give judgment from the Defence on the first three points submitted by the Defence in opening, but that the judgment should be directed to the remaining seven points. It was agreed that the Accused 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 0900 hours tomorrow 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 should 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 at corner of Via Tre Cannelle 12 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 the another Captain's — nearby building. I belonged to General Berardi's forces. I was a Sergeant Major. I was dressed in civilian clothes with an armband — ~~[illegible]~~ a white band with a black border round, marked "Polizia".

~~[illegible]~~ 67.

1232

It was issued by an Captain on the afternoon of 4th June.
I belonged to a different organisation from the accused. I knew
Count Castelli Alberto. My organisation did not belong
to any one political party. It was composed of elements of
the Army. I was myself in the Army. Our job was to
escape the Germans when — by Captain with 8 men was to
escape in the afternoon of 4th and told us until the Allies
arrived. On 5th an Allied officer arrived and told us, so
we went away. At 2.35 p.m. I was not on my particular
job — I was just waiting for my Captain — 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 — going was dressed in grey, with
his back towards, 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 — military man with not
a coat. The military man was facing the civilian with
his face 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 — cap. I could not tell what organ-
isation he belonged to. At that moment when I saw
the scene I did not see my mine. I did not see my
letter. I looked round & I did not see my army.
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 in the front round
the body. He had no arm in his hand. He appeared
to me to be a completely unarmed man. There were

1232 BIS

I do not see, in Court. Nobody in a official position under the Patriots' organisation came to R. house and questioned me shortly afterwards. NO – (question misunderstood)
A civilian with an armband did come up to our position.
It was not Custodio 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 Celestino Ovidio, the Brigadier 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 station wagon 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 ~~the incident~~ scene of the incident. it was, but it was very near the spot. 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 pictures. 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 Brigadier of Lourenço was present 1/2 minutes. I think he was in civilian clothes.

Xxd Atty. Peris

(Statement of Luis was called for, ~~and~~ admissible by the Court, and put in evidence as Exhibit 4).

No other questions.

Xxd Lt. Sabatino.

I remember that Celestino Ovidio was in civilian clothes.

65.

1233

Had he been in my room I should have said more. 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 interpreted 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 want to say. I was called before Captain Gambrill on 24th or 27th. I was not arrested. I was invited to go there, and I accepted the invitation.

1234

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 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 there 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 no armband, and was with the letters VL. There was the accused. With the accused was a black young lady who had a pistol, but not in her hand - inside the belt. I cannot say if that 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 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 the '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 rank. 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 first - but he may have been in one of the groups at the corner. I don't know if there is - But 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

1235

xxd Avv. Nicola.

There may be a flaw in the upper part of his Tè Cannelli, and there may have been a prep flaw — 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 Capponi (recalled by Court)

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 head 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, in order to find some Finance guards who had remained on the scene to keep public order. Those Finance guards have not been witnesses in this case. I returned later, in the time it takes to go up the stairs to Via Rasella and return. When I returned the pistol was gone. I cannot say who had taken the pistol. I asked the 3 Finance guards and a policeman in civilian clothes who was there, and none of the four could tell me anything about it. There were many civilians there, especially many soldiers. I did not know any civilian personally after the incident. But then 3 young men who had remained found me at the newspaper stand — the kiosk. A friend told them to look for Rosa, but one of the three gave me a pistol. I have already testified about this to Capo. Guastini. It was a Beretta 9. It is not right that I said — pistol at the time of the incident. (Carlotti Alberto is brought into Court). I don't remember seeing this man before.

64.

1236

I was made that day, because that day I met a fellow countryman in Piazza Vittoria. I was approached by 5 Soldiers who asked me to show them my pistol. I showed it to them, and they put it in their pocket and ran off. That is why I was named that day.

xxd Avv. Perris

That day I came out of hospital and went to a house of friend. That I ate and went slowly to my barracks. I came from Corso Vittoria, by Piazza Vergine, along Via Quattro Novembre to Via Tè Cannelli. ~~Afterwards~~ After the scene I met no one else on Via Tè Cannelli. I was walking alone. It took about 30 seconds to get out of Via Tè Cannelli. I was walking fast. At some points I ran, but I was stopping because if I could find anyone to bring aid. It is 30-40 metres from the scene of the shooting to the end of Via Tè Cannelli. I could hear in about 30 seconds, but there was traffic and I could not cross. The west of the street was deserted. The other people I saw were behind. There were 3 people in the direction where were behind. Barbarisi fell - I am speaking after the incident. I did not approach there then, because I did not know them & did not know their intentions. I did not speak to anyone, and no one spoke to me in Via Tè Cannelli. I was dressed that day - I am now - with nothing in my hand. I was wearing a beret, and not the standard hat. Immediately after I was disarmed I took a uniform to my Superior. My Legion is at Santa Maria Maggiore. It is about 1 - 1½ km. from Via Tè Cannelli to there. In that direction 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 if we had, as I could have acted in the case of the

1237

incident of Bart appn. I/1 had found - was in the ground
[illegible] and Lt. Lentini is in charge. I was 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
bedbites. The hospital is in Viale del Re. After leaving
the hospital I went to my sister's house, in Via Cavour, to
eat. I was there about 11.45. I stayed there about half
an hour. I was with not 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 Argentina
and on to Piazza Venezia, and then on to Via IV Novembre.
I was 7-8 yards 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 on cuff, 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 confused, but then noticing the
yellow stripes on his trousers, I concluded Barbisi was an
officer in the Fiume Guards. Before 5 June officers were
authorised to wear shirt-sleeves, in public and on duty.
I was going to many hours of duty. The
hospital is called Gallicano.

Lt. Tancredi Aldo (recalled by Court)

There was a ~~[illegible]~~ holster on Lt. Barbisi's belt. When I saw
Barbisi's body afterwards, I did not see his pistol.
He looked around on the ground but found nothing. He
only arrived some 2 hours after the incident. I am able
to say definitely that the pistol was not in the holster,
which I saw was open and empty.

Cecilia 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
how long it took, or how long after the incident I got

1238

Section XXI (11th Week)

The two men I saw were near the place where the streets meet a 3-4, and became nervous.

Eighth Witness (Sworn).

Giuseppe Cecchin Carmia, Salita Santa Maria da Tormarino, 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. Policelli. 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 see that he was a young man of much discipline, studious, generous, enthusiastic, both in his medical studies and in his political movements. His criticism sometimes evoked a hostile spirit of suspicion. He was always ready to cooperate kindly with everyone. During the Nazi occupation I frequently saw him. Often he was pursued by Nazis, and at times he would come to my clinic to safety his hunger.

NO XXIst

Ninth Witness (Sworn)

Ivana Domenico, Via Orazio 31. I am Director of the Istituto Istituto Dei Ingegneri — a state institution organized in the name of Matteo Ricci. I am husband of the fifth witness. On 5 June 1944 I was living at the address of Via Cardinale, with my wife, in my house at Via Quattro Novembre 144. Early [illegible] I noticed — young man in [illegible] — was training with some young [illegible]

1239

from certain civilians on the road. I saw a young man come up and I took 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 Barbaisi. The other young man I recognise as the accused, although at the time he seemed thinner and more sun-burned. Barbaisi was in shirt sleeves. I did not notice if he wore any distinguishing marks. Near Barbaisi I believe there was a civilian. Accused was followed by a Sijpesteijn. I saw accused and Barbaisi talking animatedly. At a certain moment Barbaisi 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 + entered house.

xxd

I could not tell where the two men were facing. I saw the military man point his pistol at the accused. I then turned round and ascended 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 2 shots. I believe the first was the louder group. I did not report what I saw to anyone. I gave him the story to the Advocate when I met him. I never reported to the police. I met the Advocate about 15 days ago to discuss certain questions about my la-

1240

ventotto. I 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.

Reed

The point is I am regarding an officer being one to recognise another officer in such case. But I believe that the public can recognise any officer by his boots, belt and shirt. An officer without a tunic 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 tunic 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 ~~Pia~~ 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 Bafferini) I heard some shouts. From the direction of the shouts I saw two persons facing each other. I was surprised rapidly to see a military man without 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 coming towards that way. 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 facing. I saw the military man produce a pistol,

1261

from a bullet in the chamber and fired it. If 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 moving 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 can't 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 without a hat. 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 Rexn

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 [illegible] corner where I was. If there was a vehicle waiting to turn left into Via Tre Cannelle it would not have interested me because I was stopped.

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Station. I was talking to [illegible] had happened on 5 June, and I mentioned this case. I met the Advocate (Adv. Davis) on the first floor by the landing. I knew him by name before.

No Reaction

By the Court

I did not look round 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 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 was at my left side — I cannot say on which side. I noticed these two because they were very few people in the street. I don't 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 Avocato came to see me about the Institute. The conversation about this case was incidental. The Avocato came home 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)

1263

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 Tè
Cernaia, 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
Tè Cernaia, 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 window of L'Unità and the shooting to
Via Cavour. The pistol 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 when it was,
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
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 hereinafter, 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 - step in front of the civilian. The civilian
then turned round and the Finance guard went to.

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.

XXI

The School faces three Streets, Via IV Novembre, Via Tè Cannella,
and Via Carducci. It is a High School, and I did there for
4 months — my Father also was hiding there. The Terrace
faces Via Tè Cannella immediately above the Cinema Magni-
ale. The first thing I saw when I looked out was the
officer on the ground. I did not 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 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,
into the holster of the officer. I did not report to the police
what I had seen. After entering into the office we after
he had his sleeves rolled up, and coat on his arm,
but I saw nothing resembling an arm band.

No Reaction

By the Court

When I saw the Finance Guard he was in Via Tè Cannella
outside a tailor's shop where he and warrens. He was
going up the via Tè Cannella. 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 recite 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

1265

street close to the P.O. Office's head. Then my back was to him for a few I did not notice me. 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 - this man - 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 15-17 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 chief under Rule 9. Court invites Defence to state whether any objection to witness being called by the Court under Rule 9(E).

Accused for Defence objects.

Court rules that witness be heard and recalled by Court.

Witness called by the Court (Sworn)

~~Ex~~ Maccioni Antonio, Comune di Firenze, via Calabria 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 in Via Tè Tanaldi when the incident of him. Bombing 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 Tanaldi going to the Barracks. I was going up the hill in the direction of S. Maria Maggiore. I was coming from Piazza Venezia. I was in the front of Via Tè Tanaldi when I saw up towards the stairs. At the moment I was passing I saw an unknown officer, with trousers striped with yellow, facing

1246

it's carrying belt. I cannot say I saw the military man produce the arm. As he had his back towards me I could not exactly see what he was pointing. He was not wholly towards 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 rear of him. I could not see the person 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 of the main-tained in the military post, both during the Nazi occupation and during the time after the Nazis left. After the time when General Ambrosio was Supreme Commander of the Italian army (in agree-ment 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 25 May. On that date I was arrested by the Germans and brought to Via Tasso. Precise agreements were made in common between me and the three military leaders in the common interest. The agreements were between me representing the military post 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

REGION IV CASE N° 7162.

not one else, it appears provided for the maintenance of public order during the period of change from one regime to the other. Above I say Germans, I include also the Republican-Fascist armed police with offensive purposes against us. By preserving public order I mean making maintenance of normal life against any disturbance. During the period of ~~war~~ duty by the Allies I was in the west, and had no contacts with the Italian front. I am giving you - general idea of the situation in the event of German withdrawal. There was nothing in writing, for reasons of security - only oral notes were exchanged between me and the various parties. Of my own knowledge I don't know what happened to the military documents after my arrest. I was arrested on 29 May. I was released, after my arrest, or down on 5 June - simply because the Germans 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 and of what was being prepared in Rome. I have reason to believe that the connection of Generals Ambrosio and Roatta was made with the agreement of the Allies. I don't of my own knowledge know of the existence of equal passwords. I did not have charge of radio communication - so I don't know if passwords were given by Radio Algiers or Radio London. In normal times I have never seen - Fascist Grand - they with me [illegible] - but it might happen in abnormal times as [illegible] I don't know the police rules well.

xxd

The military documents were found with the object of [illegible] the Nazis and Fascists, and in the purpose of [illegible] the enemies of the partisans unless they were Nazis or Fascists. It was found for military purposes, and for public order, and not for carrying out petty

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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)

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.

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EVERY DEFENDANT BEFORE AN ALLIED MILITARY COURT IS ENTITLED:

(Ogni accusato di fronte ad un Tribunale Militare ha diritto:)

A) To have in advance a copy of the charges upon which he is to be tried, if he so desires.

A) Di avere in anticipo una copia delle accuse sotto le quali egli sarà processato, se egli così desidera.

B) To consult a lawyer before the trial and have a lawyer defend him at the trial, duiu any case involving the death penalty, the General Military Court, if the defendant so requests, shall assign to him a Legal officer of the Allied Military Government to assist him in the defense of the case in addition to such other lawyer as he may select.

B) Di consultare un avvocato prima del processo e di avere un avvocato in sua difesa durante il processo. In ogni causa che porta con sè la pena di morte il Tribunale Militare Generale, se l'accusato lo richiede, gli assegnerà un Ufficiale addetto alla Giustizia del Governo Militare Alleato per assistere nella difesa della causa oltre a tale altro avvocato che egli potrà scegliere.

C) To apply to the Court for time to prepare his defence, which application the Court may grant or deny in its discretion.

C) Di fare richiesta al Tribunale per ottenere un periodo di tempo sufficiente per preparare la sua difesa, richiesta che il Tribunale può concedere o rigettare a propria discrezione.

D) To bring with him such witness as he may desire or have them summoned by the court at his request.

D) Di farsi accompagnare dinanzi al Tribunale da testimoni a sua difesa, se così desidera, o far richiesta di farli comparire per ordine del Tribunale.

E) To give evidence on his own behalf at the trial, but he may not be compelled to do so.

E) Di fornire evidenza a suo vantaggio durante il processo, ma non potrà essere costretto a fornirle.

F) To have the proceedings translated for his benefit when he is unable to understand them otherwise.

F) Di farsi tradurre i procedimenti per il suo beneficio quando egli non è capace di comprenderli altrimenti.

TIP. S. DE VITO - MIL., 27538

1250

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

1251

22 July 1944

The Court re-assembled at 1705 hours.

The Interpreter was sworn 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 Bartolozzo to Duty, 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 1/3 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 punishment. I also ask for additional suspension of sentence under Arts. ~~Hors~~ 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 do anything that brings the idea that they are for the disorderly.

The Court retired to consider Sentence.

Sentence was delivered in open Court.

H. A. Loftus Col
President

I. Campbell Lt Col
Members.
Wilson Lt Col
Major

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2-2-14

Form No. 8

ALLIED MILITARY GOVERNMENT

PROCEEDINGS OF AN ALLIED MILITARY COURT

Held at the ex Governatorato of Rome.

on the 14 th 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. Hendrickson 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: Bentivegna 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 Labaturno.

ADVOCATE FOR ACCUSED

Name and Address Avv. Corrado Perris
Avv. Adelmo Niccolai
Avv. Giulio Bonelli 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

1753

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 thi and the following page. When the length of the evidence requires, further sheets of pape 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 & his Defence Counsel were present throughout the proceedings in this Court.

In answer to questions 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 their application at any stage, if at the said time prima it appears that there are good grounds for transfer to an Italian Court.

Lieut. Sabatino

Prosecution will show that Accused 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 arrest certain persons that had been affixed to the walls in this City. Accused became disturbed that deceased was attempting to remove posters. Accused said that was the last thing. Deceased wanted to know who accused was and why he ripped the posters. Accused without explanation opened fire and inflicted fatal injuries on deceased. The homicide was unlawful and without justification.

1256

Recd July 1944

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.

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Esibito n 6
H.L.! Atti
Civile

CASELLARIO GIUDIZIARIO

PROCURA DEL RE IMPERATORE DI ROMA

CERTIFICATO GENERALE

Al nome di Bonfiglio Mario

~~*dio*~~ *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. 1914

IL SEGRETARIO

162

Stamperia Reale di Roma (365-s)

1256

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

Io sottoscritto Segr. Uffg. Alessandri Virgilio di Cesare e di Giovannini Amelia nato a Roma il 22/2/910 iscritto nelle forze di polizia con tessera e foglio n° 12719 del gruppo Mennotti affermo quanto segue. Fermo in via IV novembre angolo via Tre Cannelle volgendo le spalle alla detta via, udii altercare vivacemente alcuni individui vidi un [illegible] un tale vestito di grigio che mi voltava le spalle fumatore il braccio su un militare senza fucile e fece fuoco tre o quattro volte, il militare che fu risultato essere un sottotenente cadde immediatamente esanime. Fermato lo operatore che risultò sprovvisto di documenti affermò di chiamarsi Bentivegna Rosario fu Vincenzo e di Domenica Valentina abitante in via Torino 122 nato il 22/6/922. Il Bentivegna è un tipo snello con barbetta corta e nera. Al momento del fatto il Bentivegna [illegible] portando tessera del P.C.I. n° 6577 di servizio presso il giornale dell'Unità (vecchio Lavoro Fascista in via IV novembre) affermò di aver sorpreso il sottotenente nell'atto di staccare i fogli murali del giornale dell'Unità e redarguitolo mi rise fumose la rivoltella e fece di fuoco di [illegible] fatto

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1254

di aver fatto fuoco immediatamente. Testimone del fatto era la Signorina Caffarri Carla fu Giuseppe e di Tamburri Maria nata a Roma il 7/12/1920 abitante in Foro Traiano, armata anch'essa di pistola. Quella Signorina successivamente fu munita di documento e regolare autorizzazione nel P.C.I. di guardia al Comunale nell'Ufficio Gabinetto da me nella redazione del detto giornale per le loro funzioni si fece firmare il comandante della guardia del giornale Sig. Terenzi Amerigo di Giuseppe e di Olimpia Fori nato a Roma il 17/4/909 abitante in Via Foppiano 15.

Note: nella mano e nelle vicinanze del sottotenente caduto non fu rinvenuta da me nessuna pistola. La Signorina Caffarri Carla affermò di aver veduto il sottotenente fumare l'arma nel Boudoir, e le fu restituito quale trovato i fogli suddetti.

Dovendomi allontanare immediatamente per servizio, il corpo del sottotenente, ~~fu tolto~~ mi fu rimosso dal Sig. Terenzi Amerigo, sarebbe stato tolto dalla strada dopo i rilievi del corpo di guardia del giornale. Fu redatto di quanto sopra

Resp. Uffic. Giudiziario Vigile

1258

Votes 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 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. 15.

If the answers are negative, the aggravating circumstance of the

COMMISSARIATO P. S.
MACCARESE

Rom ,li 5.6.944

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 160
(F.Cocace)

1260

UFFICIO PASSAPORTI

PASS. N. _____ Roma, li _____

Alla R. QUESTURA di

_____

OGGETTO: _____

Con riferimento al telespresso del R. Consolato d'Italia a _____ N. _____ in data _____ si prega di { confermare / comunicare } gli estremi del passaporto del connazionale in oggetto andato { smarrito / distrutto } fornendo informazioni sulla di lui condotta specie politica ed esprimendo infine il parere circa il rilascio di altro analogo documento in suo favore.

PEL CAPO DELLA POLIZIA

1261

Report for the killing of a sub-Lieuten...t 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 vith 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.

1262

ACCESS RESTRICTED

The item identified below has been withdrawn from this file:

File Designation _____

_____

Date August 30, 1944

From Robert C. Hendrickson

To Major W. W. Battersby

In the review of this file this item was removed because access to it is restricted. Restrictions on records in the National Archives are stated in general and specific record group restriction statements which are available for examination. The item identified above has been withdrawn because it contains:

☑ Security-Classified Information

☐ Otherwise Restricted Information

JCS-P.1 ... guidelines — Authority

6-5-73 — Date

GENERAL SERVICES ADMINISTRATION

GSA ... 7117 ...

GSA DC ... 10421

WITHDRAWAL NOTICE

1263

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

12 July 1944

SUBJECT : Convening of General Court for the trial of the case of BENTIVEGNA Rosario

TO : Lt. Sabatino
Special Prosecutor,
Palace of Justice.

1. The General Court constituted for the trial of the above-named accused will convene at the Palace of Justice on Friday morning, 14 July 1944 at 0930 hours.

2. Transport for the Judges will leave the Albergo Ambasciatori at 0915 hours.

3. The Prosecutor , Lt. Sabatino will proceed forthwith to prepare the case for trial and to conclude all details necessary to its proper presentation.

4. The Court will convene in the Court-room now used by the Superior Court.

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

RCH/PA.

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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

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 ~~executive~~ firing-squads of 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

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 Perni, to the officer of Allied police who proceeded to the carrying out of enquiries and interrogations, are: 1) Italo De Tuddo, son of Amelio, aged 28, resident in Via Flaminia 19, Rome, who

1767

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 Musso and his wife, Via Orazio 31, Rome: the Musso 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.

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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 at the 5th year, after the 8th September 1943, felt (that above every other personal interest) it was his duty at 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 night 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 feeds:-

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

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 Cassiina 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 Monte Mario, 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 with~~ petrol in Via Flaminia (he destroyed another German lorry in Via Cavour); he ~~took part~~ personally in the attack against the German column of SS. 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.

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

Roma. 5 July 1944.

1271

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

2/

Chief Legal Office
(thro' Capt Trenhill)

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 right in preparing his case by (legal Section Rome Area Command.

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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 braccialo 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

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'"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 pure 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.

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che l'incidente si sia svolto nel modo so=
pra descritto è comprovato:

1°) dalle dichiarazioni di Bentivegna Rosario, che per le sue qualità di carattere, di educazio=
ne, è assolutamente credibile. E' comprovato al=
tresì dal comportamento stesso del Bentivegna, il quale, anzichè sottrarsi alle indagini dell'auto=
rità si mise a disposizione di questa, dando in un primo momento le sue vere generalità, che avreb=
be invece potuto facilmente occultare, e in un se=
condo momento presentandosi spontaneamente all'au=
torità di polizia allertata per fornire tutti i chia
rimenti opportuni.

2°) dalle dichiarazioni fatte dalla teste, si
gnorina Carla Capponi, la quale accompagnava il Bentivegna, e che fu presente allo svolgimento del fatto. La Capponi è teste assolutamente insospet=
tabile, sia per le sue alte qualità morali. sia

3°) Dalla dichiarazione scritta, allegata al processo inviata dalla M.D. Isabella Colletti, 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'al
tro con il braccialetto dei patrioti, che si scambia=
vano 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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Così ricostruiti i fatti, non vi è dubbio che nella specie non sussista alcuna responsabilità xxxx 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 pomeriggio 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.

PERICOLOSITA' DEL 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 vicinanze 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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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 molte più azioni armate contro gruppi di tedeschi, (in complesso sei azioni), in cui oltre ad uccidere vari tedeschi, a catturare 28 prigionieri, che riuscirono poi a fuggire nell'imminenza dell'entrata a Roma delle truppe alleate, avendo egli ed alcuni suoi compagni allontanato dal luogo dov'erano i detenuti, egli tolse al nemico 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 agguato 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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1277

un altro attacco a un gruppo tedesco, sulla Via Prenestina, danneggiando un camion; distrusse un centralino telefonico tedesco; distrusse un camion tedesco presso il Forte Forte; 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'Artiglieria; eseguì l'attacco alla colonna fascista che si recava per via Tomacelli; incendiò un camion carico di benzina a Via Claudia (distrusse un altro camion tedesco ad 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 trentina.

Di queste azioni del Partigiano, la stampa periodica quali è stata commentata dai giornali clericali, del Vaticano, ed in particolare dall'"Osservatore", il Partigiano 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 Partigiano ha compiuto con assoluto disprezzo del pericolo a cui si esponeva, contro una colonna di SS armati in pieno assetto di guerra.

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Datax la personalità eccezionale del Bentivegna, e le modalità tutte del tragico incidente, in cui doveva trovar la morte il tenente Barbarisi, ~~[illegible]~~ confidiamo in una sollecita scarcerazione di lui.

Roma, 5 luglio 1944

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CASE OF RENTIVEGNA 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 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

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art.61 N°10 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 not 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 21 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 impriconment 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-

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)

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La difesa ritiene che il Pubblico Accusatore non è riu
scito 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 comple -
ta, inequivoca, positiva dell'innocenza di Bentivegna Ro
sario.-

Ci proponiamo, pertanto, di provare:

1°) che il fatto è avvenuto in un'atmosfera di guerra guer
reggiata; che il Bentivegna, come tutti i patrioti italia
ni, secondo gli ordini e le disposizioni impartite dal Co
mitato di Liberazione Nazionale, attraverso le organizza-
zioni 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 pome-
ridiane, 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 nazi-fa-
scisti;

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

4°) che i Patrioti erano vincolati agli ordini ricevuti,
e che il 5 giugno, alle ore tre, non era ancora noto che
gli Alleati assumevano tutte le funzioni di polizia.-

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, se 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-

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.-

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N.C. ZONE (VIOLA) A.M.G.

1

3rd July, 1944.

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

From: Ca t.T. M.P. 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 Perinatti, 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 preperation 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 rapidly 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 1st left Intercostal space and passing in a slightly downward direction and leaving the body at the 5th Intercostal space on the posterior axillary line.

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c) Gun of small calibre, probably not more than 6.35 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 dec. 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 INSIACCANDESSA 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 action 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 it was not struck. Because of the shots he pulled out the pistol, fired from

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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 Ronconi, 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.S. 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 interment.

16. The charge or charges in this case must arise from the Italian Law. I am advised by Colonel [illegible] that

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of the Deputy Procura, Via San 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. Respectfully submitted for information of legal department.

Wm Greenhill

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

In the field,

3.7.44.

2/

Maja Hendrickson, Senior Legal Officer
(thro' Col: Poletti)

Referred please

Pollock Lieut.
Rome Regional P.S.O

2/7/44

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REPORT OF DR. GUIDA

MEDICO-LEGAL HOSPITAL-TORINO

Dissection Room.

At the request of the Allied Military Government I have today, June 7 th, 194[illegible] at 2.45 p.m. made the partial autopsy of the body of Giorgio BARBAROSI of whose identity nothing further is known.

Inquiries 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 cut, introflexed, ecchymotic and tattooed for a width of 3 mm. is noted. By testing it with a speculum 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 irregular, ecchymotic, out-bending and not tattooed. Also here the speculum confirms that the wound penetrated the thoracic cavity. No other traumatic injuries are found on other parts of the body.

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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 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 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 U. University.

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H

.M.S.
.Unit .ranch

8th June, 1944.

Statement of [illegible]LI, Alberto, s/Ord. 3c, Via 20 Settembre, 28E, Rome, Lieutenant, Italian Navy, who says:

At about 2.30 p.m. 8th June, 1944, I was standing at the door of the Italian Patriots building in Via Pilotta, 24, Rome, when I heard shots. Shortly afterwards a civilian, whom, I do not know, passed by me and said "A member of the Guardia 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 - reached the corner of Via 3 Cannelle, I saw a crowd gathered at the corner. I walked through the crowd and saw the body of man dressed in the clothes of a Lieutenant of the Guardia 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 Guardia 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 band. 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 step 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 United Newspaper. This building is on the corner of Via 3 Cannelle, and Via 4 Novembre. The man with the "Patriotic" 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, [illegible] said "cover up the body, it is not nice to see it". I said "well then cover it" with that the woman or the man threw some [illegible] and

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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.M. Greenhill, Capt.
C.A.P.

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TYPE 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 Terzini, 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

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[illegible] 73.
[illegible] di Venezia
Roma.

27th June, 1944.

I, [illegible] of PANTA RAMIO, 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, MIG. HQ. Piazza Venezia, at about 1 p.m. I arrested a young man named BENCIVENGA Rosario of Via Torino 122 in the Via Nazionale.

I took him to MIG. 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.

(s.d) PANTANO Giorgio

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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 Commend 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

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Roberto, quest'assemblea [illegible] perché dimostra la preparazione data dalla polizia dello Col. Polack

ZONE ENGLISH
ALLIED CONTROL COMMISSION
A.F.H.Q.No.324,U.S. ARMY
Prime Headquarters

24th June,1944.

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

TO : Col. C. Poletti, Rome.

copies to: General Johnson
Colonel Hume
Major Fieldon
Major Hendrickson.

OK
comune
generale
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 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. H. 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 150 suspects, and during the last three days narrowed the enquiries down to three or four suspects.

4. By 4 p.m. yesterday, 23rd June,1944, he had found sufficient evidence to arrest one [illegible], 62 yrs, medical student, of Via Appino 132, Rome, an avowed member of the

REGION IV. CASE N° 7762 1294

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 political 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.

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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

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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 Perinatti, 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

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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 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 Pilotte 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 desbribes, 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 di Sicurezza who was with him fired some shots, so I shot him".

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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.Catselli, 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 ahd 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 Patricts " 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.

Thos Greenhill

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

In the field.
20.6.44.

57

1302

Nothing to do
with administration
merely a relation
of police investigation

RDS

File
General Courts
RON.

56

1303

LEGAL

Recd. 29-8-1944

Major Hendrickson

Regional Legal Officer

Region IV

Dear Major Hendrickson.

Lt Col 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, R.A.F.C. as I understand the Brigadier is anxious to get this through tomorrow, if possible.

J?

1309

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.

1305

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 increscioci 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 questa 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 attentamente in considerazione. Come è già stato posto 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.

Bisogna 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 carica di elettricità ed i sentimenti erano eccitati. Pur considerando questo, la Corte è convinta che l'atto del deceduto di strappare la pistola [illegible] costituiva una [illegible] [illegible] secondo l'art.52 del Codice Penale. Posto ciò, la Corte

1306

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 quest'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 risultò 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 circostanza 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 Corte ed ora 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.

1029

HEADQUARTERS
ALLIED CONTROL COMMISSION
LEGAL SUB-COMMISSION
APO 394

/rlc.
5 August 1946.

AGO/4083/3/L.

SUBJECT : Petition for Review - [illegible] Rosario.

TO : Regional Legal Officer (ZI/S: 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 LtCol

I.C.H. CAMPBELL,
Lt. Col.,
Chief Judicial Officer,
for Acting Chief Legal Officer.

Encl.

43

REGION IV CASE N°7762

1309

JUL 26 1944

AVV. RUGGERO DI BENI

ROMA - LUNGOTEVERE ALTO

TELEFONO

1004

Rome, July 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

1340

AVV. RUGGERO DI SE[illegible]NI
ROMA - LUNGOTEVERE ALTO [illegible]
[illegible]

Rec'd Aug 4'44

Legal

August 1944

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

A.M.G.Superior Court Rome Area
Palazzo di Giustizia, Rome

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 this 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

33

1312

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 paper as they have done in Bentivegna case.

Recommend I talk to Major Lacaros about this.

RJH.

1313

Recd July 18 44

P/Q/P/16

Office of D.C.P.S.
Rome, 16/7/44.

Confidential-Urgent.

Dali' 18

Lt. Col. J.R.Pollock,
Chief Public Safety, Rome.

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.

R of B

Copy to:
Director Public Relations.
(For information)

Col' Maj Lucas (Ass' Maj. Skidmore) for much the same, but perhaps P.R. Press might be warned to possible injustice to accused & also ref sub judice & again for such comments Pollock 21/7

1317

1314

eva a forte velocità in-
Largo Tartini il co-
dell'Arma dei Carabi-
Taddeo Orlando che ri-
rite lacero-contuse alla
mporo-parietale s., com-
ultiple e uno stato di
ribili in 30 gg. s. c. Il
Orlando, cui auguriamo
to ristabilimento, dopo
medicazioni al Policlini-
trasportato al suo do-

furto in pieno giorno

giorno — tra le 12 e le 14 —
penetravano nell'abitazione di
tti al quinto piano di Via del
dopo aver forzato con grimaldelli
della porta. Un improvviso ru-
scale interrompeva il lavoro dei
fretta e in furia si allontana-
casa lasciando parte della refur-
anerottolo della scala stessa.
uscivano a portarsi via però, poco
quida, un braccialetto d'oro, un
paio di stivaloni, mentre stava-
dere il volo una bicicletta ed una
tografica.

anto va la gatta...

spresi era evaso da Regina Coeli
e da quel giorno si godeva una
libertà perchè la sua condanna
ni di carcere era ben lungi dal-
ontata. Ma l'amore per la roba
si era spento in lui e l'altra mat-
e sorpreso a rubare una bicicletta.
al Commissariato di Borgo dichia-
marsi Mario Bottoni ma il fun-
on doveva faticare molto a ricono-
la vera qualità di evaso e di vec-
udicato e lo rimandava all'antico
di via della Lungara.
corso attive indagini perchè sem-
al falso Bottoni siano da imputare
consumati in questi ultimi due

S. Anselmo, Mecca dei ladri

ladri di Roma sono intenti a re-
via S. Anselmo dove pensano im-
avigliare i villini e i parecchi
rrono nel remoto quartiere.
quindici mesi, in Via Sant'An-
7, hanno aperto il cancello della
ziani con una martella pneumatica
hanno asportato una bicicletta
ligo «Carera» nuovissima. Alcuni
ro, sempre di pieno giorno, han-
ro una lira pianola, mentre sul
ge e con sodomo smontano nella
del cancello. Per precauzione il gui-
rano anche staccato la spranga
re in maniera da rendere impos-
messo in azione e poter ben
eguito il loro intento. Ma
che i ladri, previggenti, compiono
a cassetta al tempo di mangiare, in
do poter

Tutti e arrestati

Abbiamo narrato l'arresto avvenuto nelle acque del Tevere il 15 agosto, di un ladro, certo Baroni, per la cui cattura erano stati sparati colpi di pistola in aria. Siamo in grado di precisare che l'arresto è avvenuto per l'intervento [illegible] del ric. Giuseppe Perrone di S. Martino, addetto al Tribunale Alleato. Questi, che s'era slanciato all'inseguimento del ladro, ottenne la cooperazione della guardia di finanza Terra Arnao Santa del battaglione R, e requisita in barca con cui il Terra riusciva, dopo lungo inseguimento, a fermare il Baroni che intanto nuotava verso le banchine del Ponte S. Angelo, e a trarlo a riva. Il Terra, poi, accompagnava il ladro al Commissariato di P. S. dove veniva preso in custodia dagli agenti di P. S. che erano, durante la scena, accorsi in prossimità della banchina.

Tre ladri aggressivi

Ieri mattina, poco prima dell'alba, mentre l'agente notturno Giovanni Delli, percorreva via Calabria, notava, dinanzi alla macelleria segnata col n. 24, due uomini in atteggiamento sospetto che, vistolo avvicinare, si davano alla fuga in bicicletta.

Il Delli, accortosi che la saracinesca era stata forzata ed era in parte sollevata, estratta la rivoltella, faceva per entrare, ma veniva inaspettatamente aggredito da tre individui usciti dal negozio che lo disarmavano e prendevano a percuoterlo violentemente. Il malcapitato agente avrebbe certo passato un brutto quarto d'ora se i penetrieri di un forno lì vicino, attratti dal rumore della lotta, non fossero tempestivamente intervenuti in suo aiuto. I tre audaci malviventi riuscivano però a fuggire abbandonando la refurtiva.

Tempo fa la stessa macelleria ha avuto un'altra visita dei ladri che vi hanno fatto un bottino per oltre 200.000 lire.

Il ricorso Bentivegna accolto

Come i lettori ricorderanno, il parrucchiere Rosario Bentivegna, accusato di omicidio in persona del ten. Barbarisi, dopo lungo dibattimento, è stato condannato, or è più di un mese, dalla Corte Generale Alleata alla pena di 18 mesi di reclusione.

I difensori del Bentivegna, avv. Nicolai e Ferri, avvalendosi di un rimedio concesso loro dalla procedura che regola la giustizia militare alleata, hanno presentato tempestivamente ricorso per revisione della causa al Governatore militare. La revisione non dà luogo ad un pubblico dibattimento, si svolge, per mezzo di un collegio di consiglio.

Questo giorno si è riunito in senso favorevole a Rosario Bentivegna. Il ricorso è accolto. E' da ritenere che, annullando [illegible] il fatto materiale, in base al [illegible] si sia ritenuto inesistente l'elemento della [illegible], e legittima, in rapporto alla circostanza del fatto, la reazione dell'accusato, come quella che era rivolta ad allontanare da lui un pericolo immediato ed ingiusto.

Rosario Bentivegna, è stato posto [illegible] definitivamente in libertà.

MOSCHET

Teatro VA

4 NUOVI

e nuove esib

TRIO PRIM

IN

(evviva e

DOMANI 2 RAD

ore 16 e

Ricerca

Il 17, ore 13, al
pria casa, Matteo
chucchi Filomena,
sia) statura piccol
occhi celesti. Ves
in nero bianca al
notizie al 768.265

«L'incontro
buon libro può
stino di un'an

BIB

... libreria degli
ROMA - VIA S. ANNA

AVVISO - RA

Accettiamo pu
ROMA - VIA
prenotazi
IMPRESA DOMAN
VIA CRES
Telef

AVVISI

13.6

QUARTIERI GENERALI DEL G.M.A.

IV REGIONE

DIPARTIMENTO LEGALE

8 agosto 1944

Oggetto : Decisione della Corte nel caso Bentivegna Rosario

Per : "Corriere Giudiziario"

Avv. Lombardi

Via Montebello n°22

I. In conformità alla vostra richiesta vi inoltro con la presente la decisione della Corte nel celebre processo di Bentivegna Rosario.

2. Sarò ben lieto di fornirvi, su richiesta, qualunque altra informazione relativa al caso.

Firma del Magg. Robert C. Hendrickson

Ufficiale legale regionale

1316

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.

47

1317

QUARTIERI GENERALI DEL G.M.A. (Archivio legale)

IV REGIONE

DIPARTIMENTO LEGALE

6 agosto 1944

Oggetto : Istanza di revisione di sentenza di Bentivegna Rosario

Per : Ufficiale legale in capo della Commissione di Controllo Alleata

I. In base a quanto stabilito al paragrafo 6 dell'art. 32 delle Consolidated Instructives per le Corti Militari Alleate della prassi consolidata

allego :

a) Istanza di revisione di sentenza del caso in questione con le osservazioni dei giudici del processo ivi aggiunte.

b) L'intera documentazione del caso e sei oggetti prodotti in giudizio.

2. Considerata l'atmosfera politica che ha circondato il caso fin dal suo inizio, le osservazioni dei giudici andrebbero attentamente vagliate ed esaminate dall'autorità preposta alla revisione.

Firma del Maggiore Robert C. Hendrickson

1318

[redacted]

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 Consolodated 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.

[redacted]

37

[redacted]

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

1319

COMMISSIONE DI CONTROLLO QUARTIERI GENERALI ALLEATI

SOTTO-COMMISSIONE LEGALE

5 agosto I944

Oggetto: Istanza per revisione - Bentivegna Rosario

Ufficiale Regionale Legale (THRU: Commissario Regionale), IV Regione.

I. Invio qui acclusa l'istanza di revisione del caso sopracitato e le osservazioni della Corte. Constaterete che ho scritto una nota in merito alle ultime due frasi, frasi che non riguardano né il verdetto né la sentenza della Corte.

2. Sono certo che sottoporrete la documentazione a revisione in tempo debito.

Firma del Tenente Colonnello

I.G.H. Campbell

1320

Fld Kit. 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.G.H. CAMPBELL,
Lt. Col.,
Chief Judicial Officer,
for Acting Chief Legal Officer.

Encl.

REGION IV CASE N°7762 43

1321

OSSERVAZIONI DELLA CORTE

Dopo aver letto con attenzione l'istanza di revisione non abbiamo motivo di cambiare la nostra opinione, e cioé che l'imputato sia stato giustamente condannato e che la sentenza non sia stata certamente eccessiva.

Per quanto riguarda la condanna riteniamo che l'obiezione relativa al fatto se l'accusato fosse o meno andato oltre i limiti della legittima difesa si trattava di un'obiezione reale nei confronti della quale la Corte (che ha ascoltato le deposizioni e visti i testimoni) era il miglior giudice. Siamo convinti della dichiarazione, che abbiamo ascoltato con grande attenzione, secondo la quale l'imputato era andato oltre i limiti della legittima difesa, nel senso che la sua azione fu inutilmente violenta, cioé sproporzionata all'offesa subita. Aderiamo all'opinione espressa nella nostra sentenza secondo la quale il mero fatto che il deceduto estraesse la rivoltella e la puntasse contro l'accusato non stava ad indicare di per sé alcuna immediata intenzione di sparare, né tanto meno di uccidere. La testimonianza indica infatti la conclusione contraria, in quanto il deceduto di fatto non sparò, pur avendo chiaramente l'opportunità di farlo se la pistola era carica (riguardo a ciò non ci sono prove), mentre questa era puntata contro l'accusato.

E' vano asserire che l'accusato non avrebbe potuto reagire in nessun altro modo. In primo luogo poteva parlare e spiegare chi fosse e il motivo della sua intromissione. Se fosse stato neces-

sario sparare (ma noi, avendo udito la deposizione, non lo crediamo), avrebbe potuto sparare per ferire e non per uccidere. Per i suddetti motivi riteniamo che l'Istanza per revisione di sentenza non offra motivi di annullamento della condanna. Per quanto riguarda la sentenza gli elementi cui si fa riferimento nell'istanza di revisione sono stati tutti attentamente considerati e ad essi é stato dato il massimo di importanza. ma per le circostanze attenuanti, il buon carattere dell'accusato e il ruolo da questi svolto come partigiano avremmo dovuto ritenere giusto imporre una pena molto più severa. L'istanza di revisione non offre nessuno spunto legale che non sia già stato pienamente preso in considerazione e, di conseguenza, riteniamo che non vi siano motivi legali per impedire la sentenza. Siamo consapevoli del fatto che ci possono essere motivi politici, che non siamo in grado di giudicare, i quali potrebbero rendere auspicabile una riduzione della pena. A tale riguardo si propone che prima di modificare la sentenza in base a motivi di ordine politico sarebbe opportuno ascoltare il parere del Comissario Regionale, responsabile del futuro mantenimento della legge e dell'ordine in Roma, il quale si trova nella posizione migliore per giudicare le probabili ripercussioni politiche di una qualsiasi azione di questo tipo.

Firme del presidente e di un membro della Corte.

1323

Nota del Tenente Colonnello I.G.H.Campbell, membro della Corte

Condivido tutte le osservazioni sopra riportate ad eccezione delle due frasi conclusive che ritengo fuori luogo ne "Le osservazioni della Corte". Dal momento che sono state inserite desidero fare i seguenti commenti:

a) Queste frasi possono dare l'impressione che la pena sia stata assegnata con l'idea, o la speranza, da parte della Corte stessa che sarebbe stata ridotta in base a motivi politici. Questa impressione sarebbe falsa, almeno per quanto mi riguarda.

b) Se l'autorità addetta alla revisione sta prendendo in considerazione la riduzione della pena sulla base di motivi politici, non ritengo che sia opportuno chiedere l'opinione del Commissario Regionale responsabile per il futuro mantenimento della legge e dell'ordine in Roma. Questo caso ha avuto una notevole pubblicità: presumibilmente nessuna riduzione avrebbe la stessa pubblicità. E' necessario, quindi, giudicare "le probabili ripercussioni politiche" non solo a Roma ma in tutta l'Italia già liberata e ancora da liberare.

Firma del Tenente Colonnello Campbell.

Osservazioni supplementari del Maggiore Robert C.Hendrickson, membro della Corte.

Dal momento che risulta evidente dalla nota aggiunta alle osservazioni della Corte da parte del Tenente Colonnello Campbell

che le due frasi finali da me sottoscritte quale membro della Corte, sono soggette ad un'interpretazione contraddittoria, mi sento costretto ad aggiungere che, secondo la mia opinione, nessun elemento di tutta questa faccenda potrebbe giustificare una modifica o una riduzione della pena; in realtà sono assolutamente dell'avviso che la pena sia stata troppo, se non eccessivamente, moderata.

Firma del Maggiore R.C.

Hendrickson.

REMARKS BY THE COURT

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. Lickfett Colonel — President.

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A.B. Head Lt Col — Members.

Maj

Note by Lt.Col. I.C.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)

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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.

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

I. 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.

Firma del Magg. Robert C. Hendrickson

Ufficiale Legale Regionale

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~~RESTRICTED~~

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

L/C/1000. 16 August 1944

SUBJECT : Case of Bontivegna 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. HENDRICKSON
MAJOR A.U.S.
REGIONAL LEGAL OFFICER.

RCH/GC

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

~~CONFIDENTIAL~~
~~RESTRICTED~~

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

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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 conceseo la cauzione
è stato prosciolto
ha pagato la multa inflittagli
è stato giudicato ad una pena condizionale

Data: 16 Agosto 194 4

(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, 194 4

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

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T R A N S L A T I O N

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 peuple, 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 x 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 peuple 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.

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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 9[illegible]

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battles during past nine months.
After aggressor was killed it was made clear that it was not a fascist but ~~xxxxxxxxxxxxxx~~.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 help 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 ~~antifascist~~ 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 drsire 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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ALLIED CONTROL COMMISSION
ROME REGION

Roma, 12 luglio 1944

Spett.Redazione
"IL CORRIERE DI ROMA"

Vogliate pubblicare nel numero del "CORRIERE DI ROMA" di domani 13 luglio 1944 il seguente articolo:

Domani 14 luglio 1944,alle ore 9,30, avrà inizio presso la Corte Generale del Governo Militare Alleato il processo a carico di Bentivegna Rosario di Vincenzo, imputato di omicidio nella persona del Sottotenente della Guardia di Finanza Giorgio Barbarisi.L'omicidio ebbe luggo in Roma il 5 giugno 1944.
L'udienza sarà pubblica.

Lt. Louis A.Sabatino
Prosecutor General Military Court

P.S. Reporter giornalistici potranno intervenire all'udienza, con l'intesa che nulla sarà pubblicato senza il preventivo consenso delle Autorità Alleate.

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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 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

the Evidence, it has been possible to form a fairly clear view of the main events of what happened. The Court is satisfied that the accused, seeing the deceased leaning 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.

If 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 unwarranted & amounted to an assault & battery & "offesa ingiusta" within Art 52 (2) & 56 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 "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 appear in the least to 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

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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 (i) that the defence put forward under Art 52 of the P.C. has not been fully made out: (ii) that the accused that did not commit 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 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).

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

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in the charge sheet (namely arts 575 & 61 (1) of the P.C.) but of the lesser offence contemplated by Art 55 L 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~~ ask the Prosecutor if he has any evidence of previous convictions to adduce.

Traduzione dall'inglese in italiano.

D e c i s i o n e

Innanzi tutto la Corte desidera dichiarare che, nel giungere alla decisione in questa causa, non è stata influenzata da considerazioni politiche né in un modo né nell'altro. A modo di vedere della Corte, non ha alcuna importanza il fatto che l'imputato sia o meno iscritto a qualsiasi partito politico o che i manifesti strappati, che causarono i fatti incresciosi che seguirono, fossero di qualsiasi particolare partito od organo politico. Il defunto era un essere umano e l'imputato deve essere giudicato da questa Corte pure come essere umano.

La Corte ha già dichiarato che egli, salvo che non sia convinta al di là di ogni ragionevole dubbio della colpevolezza dell'imputato, deve essere assolto. Nella presente causa non sussiste alcun dubbio che l'imputato abbia ucciso il Tenente Barbarisi; lo ha ammesso lui stesso. Perciò, l'unico interrogativo che rimane è se in queste particolari circostanze l'uccisione sia stata un atto legittimo o illegittimo. L'imputato sostiene che si è trattato di un atto legittimo, per il fatto che egli ha agito in sua difesa ed invoca

l'applicazione dell'art. 52 del Codice Penale Italiano.

Nel valutare la fondatezza della domanda dell'imputato, la Corte si deve lasciar guidare unicamente dalle prove che risultano dal processo. Queste prove sono state estremamente lunghe e voluminose e la Corte le ha prese in considerazione molto attentamente. Come è già stato evidenziato, vi è un conflitto notevole delle testimonianze fra i vari testi, 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 strappare i manifesti dal defunto, si rivolse a lui in modo arrogante ed ostile; che estrasse la pistola e la puntò contro l'imputato, in seguito a ciò, senza aspettare, estrasse a sua volta la pistola e sparò sul defunto. Secondo il punto di vista della Corte, si tratta di una causa, in cui due giovani eccitabili ed

impulsivi hanno perso il controllo dei nervi, 3
facendo ricorso in modo precipitoso e senza
necessità all'uso delle armi da fuoco.
Rimangono perciò da considerare le conseguenze
legali degli atti commessi dalle due parti.
Nel far ciò, non dobbiamo dimenticare che i
fatti avvennero il 5 giugno 1944, giorno in
cui l'atmosfera era senz'altro satura di elettri-
cità ed i sentimenti erano eccitati. Pur conside-
rando ciò, la Corte è convinta che l'atto del
defunto di estrarre la pistola non era giustifi-
cato e costituiva una "ingiusta offesa" a' sensi
dell'art. 52 del Codice Penale. Ciò premesso,
la Corte è altrettanto convinta che la reazione
dell'imputato è stata ugualmente ingiustificata
e ha superato i limiti della difesa proporzionata
all'offesa. Come è stato detto dal Pubblico
Ministero, l'imputato, quando si trovò dinanzi
alla pistola del defunto, aveva altri mezzi
per fronteggiare la situazione, senza sparare
per uccidere senza indugio. Il fatto che il
defunto estrasse la pistola non significa affatto
che egli avesse intenzione di sparare. Non sussi-
ste alcuna prova che egli avesse tale intenzione
e nessun teste ha affermato che vi sia stato

uno scambio di parole, da cui si possa dedurre che il defunto avesse un'intenzione del genere. In ogni caso, è chiaro che l'imputato aveva altre vie a sua disposizione, oltre a quella estrema da lui scelta.

Stando così le cose, la Corte decide:

1) che la difesa proposta a norma dell'art. 52 del Codice Penale non è stata fatta pienamente.

2) che l'imputato non ha agito con la colpa che è contemplata nell'ultimo paragrafo dell'art. 59.

Pertanto, la causa deve essere giudicata in conformità all'art. 55 e come tale il reato è punibile a norma dell'art. 589.

Alla conclusione delle prove, il Pubblico Ministero ha ammesso che non vi fu prova di circostanze aggravanti, come indicato nel capo di accusa. Perciò, la Corte deve esclusivamente prendere in considerazione se vi sono le circostanze attenuanti previste dall'art. 62 del Codice Penale Italiano.

In base a tutte le prove, la Corte decide che l'imputato ha il diritto di beneficiare della circostanza attenuante specificata nell'art. 62 - comma 2. Riguardo a questo argomento, è

stato fatto rilevare alla Corte che sono state 5
espresse opinioni contrastanti da alte autorità giudiziarie in Italia in merito alla questione se un imputato che sia giudicato colpevole a norma dell'art. 55 possa effettivamente beneficiare dell'art. 62 - comma 2: tuttavia, la Corte decide che, in considerazione di tale conflitto di opinioni, qualsiasi dubbio nella presente causa deve essere risolto a favore dell'imputato.

Per i motivi summenzionati, la Corte dichiara l'imputato colpevole non del reato, di cui è accusato nel capo d'accusa (cioè artt. 575 e 61 N° 10 del C.P.I.), ma del minore reato contemplato nell'art. 55, punibile in conformità all'art. 589, col beneficio dell'art. 62 - comma 2.

Se la difesa desidera che, prima di emettere la sentenza, la Corte debba prendere in considerazione altre circostanze attenuanti e se desidera fare osservazioni riguardanti la sentenza che dovrà essere emessa in base alle decisioni summenzionate, la Corte sarà lieta di ascoltare tali argomenti. Tuttavia, prima di sentire le argomentazioni della difesa, la Corte deve chiedere al Pubblico Ministero se ha da produrre prove di

precedenti condanne dell'imputato.

PRETURA UNIFICATA DI MILANO

VERBALE DI GIURAMENTO DI TRADUZIONE STRAGIUDIZIALE

L'anno 1987 e questo giorno 19 del mese di FEBBRAIO nella Cancelleria della Pretura Unificata di Milano avanti al sottoscritto cancelliere è personalmente comparso il Sig. BUTELMAN GISELE RUTH nato a BUENOS AIRES il 17-10-59 e residente in MILANO Via B. MARINA 19 ; identificato come segue: C.I. MI 6335463O , il quale esibisce la traduzione che precede da lui effettuata in data 14-2-87 e chiede di poterla giurare Ammonito ai sensi di legge il comparente presta il giuramento ripetendo le parole: "Giuro di aver bene e fedelmente proceduto alle operazioni e di non aver avuto altro scopo che quello di far conoscere la verità."

Letto confermato e sottoscritto.

REG. CRON. N° 4764

19 FEB. 1987

IL CANCELLIERE
(dott.ssa M. G. CELLAMARE)

NOTA BENE:

L'Ufficio non assume alcuna responsabilità per quanto riguarda il contenuto peritale o della traduzione asseverata con il giuramento di cui sopra.

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Rec'd 15 18/44 ~~SECRET~~ 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.

~~SECRET~~

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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 as stated in the Judgment. 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.

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. Wilma
Col CAC
For the Acting Chief Commissioner

CONFIRMATION OF DEATH SENTENCE

Dated 194 Signature

Traduzione dall'inglese in italiano.

Registrato il 15.8.44.- LEGALE

14 Agosto 1944 L/10/7.

QUARTIER GENERALE

COMMISSIONE DI CONTROLLO ALLEATA

SOTTOCOMMISSIONE LEGALE

APO 394

ACC/4083/L. 14 Agosto 1944

OGGETTO: Caso BENTIVEGNA Rosario

PER L'Ufficiale Regionale Legale (Tramite: Il Commissario Regionale) IV Regione

1. Si restituisce con la presente la documentazione riguardante il caso BENTIVEGNA Rosario, unitamente alla decisione sulla revisione approvata. Vogliate accusarne ricevuta.

2. La mia decisione sulla revisione, che viene presa con l'approvazione del Primo Commissionario ad Interim, è che siano annullate la condanna e la sentenza.

3. I motivi di tale decisione sono che, secondo l'opinione che mi sono fatta in base ai fatti riscontrati dalla Corte, la tesi della legittima difesa è assolutamente fondata. Sono persuaso che in quel giorno particolare il semplice atto, da parte di un giovane italiano eccitato, di

estrarre e puntare una pistola sia la prova dell'intenzione di sparare sufficiente a giustificare un'azione immediata da parte dell'imputato di autodifesa. Oltre a ciò, è stato definitivamente accertato che il defunto "mise un colpo nel caricatore". Stando così le cose, quando si deve prendere una decisione di vita e di morte in una frazione di secondo, a mio avviso, non è reagionevole attendersi che l'imputato ponderasse le varie possibilità che la Corte riteneva gli fossero offerte: è ancor meno ragionevole dire che il sistema di difesa da lui adottato non era "proporzionato all'offesa".

Firmato: Richard H. Wilmer

RICHARD H. WILMER

Colonnello CAC

Sostituto del Primo Ufficiale Legale

48.

* * *

Allegato.- DICHIARAZIONI DELL'IMPUTATO

L'imputato Bentivegna Rosario dichiara .....

SENTENZA DELLA CORTE

La Corte condanna l'imputato Bentivegna Rosario a 18 mesi di reclusione dalla data dell'arresto per tutti i reati che gli sono stati ascritti

BH

nel procedimento sopraindicato, di cui l'imputato 3 è stato riconosciuto colpevole.

R I F O R M A

Condanna e sentenza annullate.

Data: 14 Agosto 1944. Firma: firmato: Richard H. Wilmer Colonnello CAC

Per Il Primo Commissario ad Interim.-

1398

PRETURA UNIFICATA DI MILANO

VERBALE DI GIURAMENTO DI TRADUZIONE STRAGIUDIZIALE

L'anno 1987 e questo giorno 19 del mese di FEBBRAIO nella Cancelleria della Pretura Unificata di Milano avanti al sottoscritto cancelliere è personalmente comparso il Sig. BUTELMAN GISELE RUTH nato a BUENOS AIRES il 14 - 10.59 e residente in MILANO Viale B. MARIA 19; identificato come segue: C.I. MI 6335463, il quale esibisce la traduzione che precede da lui effettuata in data 14-2-87 e chiede di poterla giurare Ammonito ai sensi di legge il comparente presta il giuramento ripetendo le parole: "Giuro di aver bene e fedelmente proceduto alle operazioni e di non aver avuto altro scopo che quello di far conoscere la verità."

Letto confermato e sottoscritto.

IL CANCELLIERE
(Dssa M. C. CELLAMARE)

Rep. Gen. N° 4763
19 FEB. 1987

NOTA BENE:

L'Ufficio non assume alcuna responsabilità per quanto riguarda il contenuto peritale o della traduzione asseverata con il giuramento di cui sopra.

1349

Avviso a pagamento

A proposito di una controversia fra Indro Montanelli, Mario Cervi e Rosario Bentivegna

Nel volume «L'Italia della guerra civile», di Indro Montanelli e Mario Cervi, editore Rizzoli, a pag. 202 è inserito un pezzo in cui si afferma che Rosario Bentivegna, «smanioso di spargere sangue», subito dopo la liberazione di Roma, uccise a rivolverate — dopo un breve alterco — un tenente della Guardia di Finanza in borghese e per questo fatto fu condannato da una corte alleata a 18 mesi di carcere, per «eccesso di difesa».
Contro questo pezzo, il prof. Bentivegna sporse querela nei confronti degli autori ed ora la questione è stata composta sulla base delle precisazioni che seguono.
Prendiamo atto che Rosario Bentivegna è stato partigiano e che fu decorato da Alcide De Gasperi con la medaglia d'argento e con altra medaglia di bronzo al valore militare per azioni patriottiche.
Quanto alla discussione tra Bentivegna (munito di bracciale di appartenenza al CLN) e due persone colte a strappare dei manifesti inneggianti a Roma libera ed agli Alleati, che si concluse tragicamente, i fatti si svolsero in modo diverso da quello narrato nel volume: uno dei due estrasse per primo la pistola e sparò due colpi contro Bentivegna, andati fortunosamente a vuoto; anche l'altro estrasse la pistola, mise un colpo in canna e puntò l'arma contro Bentivegna. A questo punto, vi fu la reazione di Bentivegna, che è stata ritenuta giustificata in quanto, dopo una prima condanna per eccesso di difesa, Bentivegna fu assolto nel processo di revisione per legittima difesa.

Montanelli e Cervi

1350

Rc'd - Aug 1, 44

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 decesduto 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

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° 787/62

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:

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1353

" 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

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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.-

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1355

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 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 provocazione, 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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1356

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

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 -

1357 bis

Roma - Aug 1, 44

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 decesduto 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=

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1358

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 ~~exxit~~ 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-

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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. 183

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:

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" 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. (10)

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

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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.-

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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 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 provocazione, 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 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'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 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

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 patriòttismo, 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 -

General Services Administration
National Archives and Records Service
Washington, DC 20409

April 11, 1984

Reply to: NNMF84-1508-WGL

Mr. Rosario Bentivegna
Via Asmara 34
Roma 00199
ITALY

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