

BR. 51

Trial against
Marinello SODINI

MILITARY COURTS FOR THE TRIAL OF WAR CRIMINALS

D.J.A.G's Case No. 16033/1

Name of Accused (including Rank, if any)	Arm or Former Arm of the Service	Age	Date and Place of Trial
Marinello SODINI	Civilian		6 March 1946. AFRAGOLA
			Convened by
			Commander, 3 District, CMF.

CHARGES

Charge. COMMITTING A WAR CRIME in that he at UDINE GRUPPIGNANI, Italy on 20 May 1943 in violation of the laws and usages of war shot and killed VX 1982 Corporal E.W. SYMONS 32 Infantry Battalion (Medical) A.I.F. a Prisoner of War.

President and Members of the Court (except Legal Member)	Judge Advocate/Legal Member
Lt-col. T.E. ABRAHAM Major T.G. FIELD-FISHER Major J.M.A. LUMSDEN	R.E. K.R.R.C. 24 Fd Regt R.A. -N.A.-

Pleaded	Finding
Not Guilty	Guilty. Strong recommendation to mercy because the Court considers that the accused was guilty of no premeditation but acted on impulse.

Sentence and Minute of Confirmation

Death by Shooting.

Confirmed by Supreme Allied Commander, Mediterranean Theatre, on 30 April 1946, who commuted the sentence to one of imprisonment for life.

When and where Promulgated :—

21 May 1946.

Date of Receipt	To whom sent	Date sent	Purport

(R6/IT/13/SD)

16033/1/A-3

Marinello SODINI

Trial by a Military Court at

AFRAGOLA

4 - 9 Mar 46

See S.

The CHARGE :

Committing a War Crime : in that he shot and killed Cpl EW SYMONS, AIF, at UDINE GRUPPIGNANI on 20 May 43.

PLEA :
Not Guilty

FINDING :
Guilty

SENTENCE :
Death by shooting.

The Court added a strong recommendation to mercy because it was considered that the accused was guilty of no premeditation but acted on impulse.

PROSECUTION :

The prosecuting officer made a brief ^{opening} address setting out the facts of the case. Cpl SYMONS was a PW at UDINE. On 20 May 43 there was a cricket match between two teams of prisoners at which a large crowd of spectators was present and at which there was much barracking. After the game was over, four or five men remained playing at the wicket, and a number of spectators remained also.

SYMONS had been drinking having a bottle of beer in his hand and was loudly barracking the players. The accused and another Carabinieri RUSSO, who approached him across the field. The accused motioned SYMONS to go to his hut. SYMONS refused and became threatening. In the ensuing confusion SODINI shot him.

The Prosecuting Officer produced sundry exhibits and inter alia the following :

Exhibit 1 : Statutory declaration of Francis SULLIVAN the accused shot SYMONS without provocation, SYMONS made no attempt to molest the accused and there was no need to shoot in self defence.

Exhibit 2 : Statement by SULLIVAN : the accused had had a few drinks but was not drunk or causing any trouble. The accused made motions as though to arrest SYMONS who paid no attention to these gestures. Two other PWs appeared to be urging SYMONS to go with the accused. The accused raised his rifle and shot SYMONS.

Exhibit 4 : The original affidavit of Lawrence MOSTRAM SYMONS was barracking the cricketers but his remarks were not directed at the guards.

/The guards..

The guards approached and grabbed him by the shoulders and he made a movement as if to pull away. Two of the guards took him by the arms to lead him away. Before they had retreated more than a few feet the accused fired into SYMONS' chest/point blank range.
at

Exhibit 6 : The original affidavit of Maxwell MAHADY

The guards walked across the pitch in a manner designed to cause annoyance, stopping the game. SYMONS barracked the action of the guards. The guards approached SYMONS and when about six yards away the accused raised his rifle and shot SYMONS.

Exhibit 8 : The original letter signed by Col CAICATERRA, Camp Commandant PG57 to HQ Territorial defence. SYMONS refused to obey the accused's hand signal to follow him, throw a beer bottle at him, shook off two other PW who attempted to restrain him, and made for the accused. SODINI then raised his rifle and fired, hitting SYMONS in the chest.

The beer served in the PW canteen contained 1% alcohol.

The letter approved SODINI's action in using his weapon, stating that the accused would otherwise have been overwhelmed by a man whose physical strength had already been demonstrated by the ease with which he had thrown off the other PSW who had attempted to restrain him. Recommended that SODINI be given a reward of 200 lire.

Exhibit 11 : English translation of the statement of SODINI

SYMONS was shouting and the accused considered him drunk. The accused approached him with the intention of making him go to his hut. SYMONS was restrained by two other PSW but tore himself away and attempted to hit the accused with a bottle. The accused lifted his rifle to protect his face and a shot went off, killing SYMONS. Accused was not punished for the incident. Later he was given 10 days leave but did not know if it was special leave.

THE DEFENCE :

The accused gave evidence on oath

He produced evidence as to good character : with reference to the shooting incident he corroborated the statement made by him and produced by the prosecution, stating that SYMONS twice attempted to attack him, in the first instance being held back by the other PSW. In cross-examination he repeated that the shot was accidental.

DONIZETTI :

The witness corroborated the statement of the accused as to the manner in which SYMONS attempted to attack him but could not state definitely the manner in which SODINI raised the rifle. He considered SODINI was obliged to fire in self defence, although he could not say

/whether the shot

whether the shot was intentional or accidental. He would have fired in self defence if he had been in SODINI's place.

Other Italian witnesses, guards at the camp, who were not present at the shooting testified that it was commonly understood that SYMONS had thrown a bottle at SODINI. The guards were generally somewhat scared of Australian prisoners on account of their strong physique. All witnesses agreed that the safety catch of the Italian service rifle could become accidentally switched from 'safe' to 'fire'. They agreed that they would have fired under similar circumstances.

Called by the Court Fra COLTA gave evidence as to the death of SYMONS in the camp hospital. He stated that the Commandant's orders to the guards were to be as severe as possible with the prisoners. He stated that the shooting was generally disapproved by the guards as being unnecessary. He never heard it said by anyone that the thing was a complete accident.

The Court refused the application of the Defence for an adjournment to call RUSSO, the guard who was with SODINI at the time of the incident, as his whereabouts was not known.

The Defence Counsel ~~stood~~ **stood** up for the Defence, pointing out discrepancies in the statements of the prosecution witnesses and submitting that the accused would have been justified in firing in self defence, even though he had consistently maintained that the shot was accidental.

The Prosecuting officer addressed the Court, pointing out that while the accused's defence was that of accident, the defence witnesses supported that of self defence. He **REFUTED** the statement that the statements of the prosecution witnesses were at variance, maintaining that on important facts they all agreed.

The Court considered the finding and found the accused guilty.

Further evidence was called as to the accused's good character. The Court delivered the sentence of death by shooting, Major LUMSDEN being appointed Mandatory Witness at the execution.

On 30 April 46 the Supreme Allied Commander confirmed the finding of the Court but commuted the sentence of death to one of imprisonment for life.