

MILITARY COURTS FOR THE TRIAL OF WAR CRIMINALS

D.J.A.G's Case No. 19/829

Name of Accused (including Rank, if any)	Arm or Former Arm of the Service	Age	Date and Place of Trial
Guilio GIULIETTI Bruno FRANCONI	Italian national do. do.		17th, 18th April 1946. MILAN Convened by Commander, No. 2 District CMF.

CHARGES

- 1st Charge. COMMITTING A WAR CRIME in that they at San Michele on 6 November 1943 in violation of the laws and usages of war were concerned with others in the killing of an unknown escaped Indian prisoner of war.
- 2nd Charge. COMMITTING A WAR CRIME in that he at San Michele on or about 6 November 1943 in violation of the laws and usages of war was concerned with others in the killing of an unknown escaped British prisoner of war.
(against 1st accused only)

President and Members of the Court (except Legal Member)	Judge Advocate General/Legal Member
Lt-col W.H.F. ROUTH Major A. LOW Som. L. I. R.A.S.C.	Lt-col J.B. TAYLOR, Som. L. I.

Pleaded	Finding
Both accused Not Guilty.	1st Charge Both accused not guilty. 2nd Charge Guilio GIULIETTI - Guilty.

Sentence and Minute of Confirmation

Guilio GIULIETTI Two years imprisonment. Confirmed by Commander No. 2 District CMF on 1 May 1946.

When and where Promulgated :— 6 May 1946.

Date of Receipt	To whom sent	Date sent	Purport

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General Report of the Proceedings of a Military Court
held at MILAN, 17 - 18 April 46.
for the trial of

Guilio GIULIETTI
and
Bruno FRANCONI

Charges i. GIULIETTI and FRANCONI : -

COMMITTING A WAR CRIME
in that they

at SAN MICHELE on 6 Nov 1943 in violation of the laws and
usages of War, were concerned with others in the killing of an
unknown escaped Indian prisoner of War.

ii. GIULIETTI :-

COMMITTING A WAR CRIME
in that he

at SAN MICHELE, on or about 6 Nov 1943, in violation of
the laws and usages of War was concerned with others in
the killing of an unknown escaped British prisoner of War.

Plea : Both accused on each count : Not Guilty

PROSECUTION In his opening address the Prosecutor drew the attention
of the Court to Articles 2, 50, 54, and 60 - 66 of the 1929 Geneva
Convention.

1st Witness : Regina FERRARI

Witness related that, in Oct 1943, an Indian escaped PW came
to her house, asking for food and shelter: he was dressed in khaki and
wore a turban and beard. Witness' husband said he was armed but witness
herself never saw any arms.

In Nov 1943, at 0930 hrs one morning, eighty fascist militiamen
surrounded the house. They commenced to fire towards the barn where
the Indian was hiding. The Indian, wearing his uniform, was arrested
and he, together with witness and her husband, were taken towards the
barracks. Witness was released en route: she subsequently learned
that her husband had been killed.

In cross-examination witness could not recall if either of the accused
were present when the arrest was made. She could only remember Lieut
CALZENDI as being present.

Questioned by the Court witness stated that there was no firing from the
barn at the militiamen.

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2nd witness : Elisa BETTILI

In September 1943 three escaped English P's W, one of whom was William CONNELL came to witness' house, and were given food, lodging and some clothes. At about 2300 hrs on the night of 5 Nov 43 militiamen, including Lt CALIENDA and Sjt Major GIULIETTI came to the house : before they entered the house there was some shooting and grenade throwing but no answering fire. The militiamen forced an entrance into the house and found CONNELL, wearing civilian clothes: he gave himself up after having been beaten with a rifle. He was removed at 0200 hrs the following morning after having been subjected to illtreatment for 2 hrs. At 0600 hrs witness, her husband and about forty other persons were arrested by militiamen and Germans and taken to the MONTORIA Barracks, SAN MICHELE. From the window of the room in which she was confined, Witness saw her husband and CONNELL pass by, escorted by soldiers. Later she heard shots and was told they had been killed.

In cross-examination witness stated that she was told that Major di CARLO and Capt AMBROSIO were also present when CONNELL was arrested. In the shooting that took place one of the militiamen was shot by his comrades who were drunk. CONNELL was captured outside the house, having jumped out of the window, and was subsequently brought back inside.

In re-examination witness stated that there were no weapons in her house and reiterated that no shots had been fired from the house.

3rd witness : Capt Bruno AMBROSIO

Witness was a member of 40 Bn GNR, under the command of Major di CARLO: This unit was attached to a German Police unit, commanded by Major BOESCHE, which was also accommodated in the MONTORIA Barracks.

Witness recalled that, on the morning of 6 Nov 1943, on returning to the Barracks from his home he learnt that during the previous night a patrol searching for escaped P's W had been fired on from a house, a militiaman had been killed and an escaped British PW captured. Witness reported this to Major di CARLO and he (di CARLO) and the German liaison Officer Capt SIMON then went to the scene of the incident to investigate.

Subsequently SIMON returned alone with a batch of Italian civilians whom he threatened to shoot. Witness then reported to Col BENEDETTO di GIORGIO at HQ, in order that the Colonel should intervene with the German HQ on behalf of the Italian civilians. On returning to the Barracks witness found that one British PW and two Italians had already been shot. Enquiries elicited the fact that a firing squad had been detailed by Capt FRANZINI, Sjt Major GIULIETTI being NCO in charge, on the instructions of SIMON, who had received the order from Major BOESCHE. Major di CARLO returned later with an escaped Indian PW who had been captured as an Italian. A rifle which had been previously taken from GIULIETTI was also recovered. Capt SIMON ordered Lieut FRANCESHINI to have the Indian shot, and this order was carried out.

Major di CARLO protested to SIMON against the shootings.

In cross-examination witness stated that GIULIETTI had lost his weapon on the 4 Nov. Lieut FRANCESHINI gave the order to FRANCONI to join the firing party.

In re-examination witness stated that he examined the weapon and thought it had recently been fired: it was a sub-machine gun.

FOURTH WITNESS: Major Ciro di CARLO

Witness identified the accused as Sjt majors of his battalion. He stated that FRANCESHINI had reported to him the capture of a British PW and the loss of one man killed. Witness was present when the Indian was captured: he was dressed as a civilian. On returning to the Barracks he was told by Capt SIMON that the British PW and two Italians had been shot on the authority of Maj BOESCHE.

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Sheet 3.

Later witness was told by FRANCESCHINI that he had been ordered by SIMON to have the Indian shot: witness protested to SIMON without result, and then persuaded Col BENEDETTO di GIORGIO to enter a protest.

Cross-examined witness stated that the order to GIULIETTI was passed by Capt FRANZINI: witness did not know who passed the order to FRANCONI. The prisoners were treated as German prisoners and the Italians were not consulted as to their disposal. Witness inferred that he would not have known if the prisoners had been accorded a trial by the Germans.

Re-examined witness stated that the prisoners were German prisoners because his Battalion was attached to a German Battalion. Witness considered that there should have been a proper trial.

FIFTH witness: Gino NGELI

Witness was interpreter in German to 40 Bn C.N.R. On the morning of 6 Nov 1943 he interpreted an order given by Major BOESCHE to Capt FRANZINI to shoot the ENGLISH prisoner and two Italian civilians. Capt FRANZINI protested against this order. Witness was present when the execution took place, GIULIETTI being i/c firing party.

In cross-examination witness stated that in his presence FRANZINI gave GIULIETTI no reason as to why the execution was to take place.

SIXTH witness: Attilio GASPERRIN. Witness stated that, as an official of VERONA cemetery, he received the bodies of CONNELLI and the Indian for burial on the 8th or 9th of Nov 1943: both had died from shooting.

The Prosecutor tendered to the Court the statement of: -

Atalo RIGO

Witness was a photographer: In December 1943 a German Officer had requested him to develop two negatives, one of an Indian soldier under escort and the other of an execution taking place: prints of these two negatives he handed to Sjt CAMFIELD in Nov 1945.

These two exhibits were attached to the proceedings.

Seventh witness: Sjt CAMFIELD 78 Section S.I.B.

On 20 Nov 1945 witness interviewed the accused GIULIETTI, who made a voluntary statement. The accused was not in arrest at this time and witness was not then aware that he was deeply implicated in the case. Witness had not at that time made up his mind to charge the accused with this particular offence and offered no inducement to him.

The Court challenged the admissibility of this statement made by the accused.

Questioned by the Court witness stated that at that time the accused GIULIETTI was detained by the Italian Government, on what charge he did not know.

The accused made a narrative which witness took down at his dictation.

Cross examined on the issue of admissibility only witness stated that the accused admitted commanding a firing squad. It did not occur to witness to caution him.

The Defending Officer submitted that rules 3 and 6 of the Judges' Rules debarred the admission of the statement of the accused.

The Prosecuting Officer cited the cases of Rv BROWN and Rv CODINHO, (ARCHOLD (1943) pages 367, 370 and 373 referring)

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Summary

The Court were not satisfied that the statement of the accused was obtained freely and voluntarily and that it was not induced by some fear of prejudice or hope of advantage. The Court considered that the accused should have been cautioned and refused to admit the statement tendered.

(NOTE : Col J.B.M. GUNNING, DJAG, GHQ CEF in his preconfirmation Advice to GOC No 2 District dated 24 April 46 commented as follows : -

"In my opinion the Court was substantially misdirected by the legal member in refusing to accept as evidence the statement made by the accused to Sjt CAMFIELD. The legal member appears to be under the impression that the Judges Rules appear to form part of the law of England. This is far from being the case as the rules were designed as a guide to police officers and as a basis for an English court of law deciding as to whether or not a statement made by an accused was free and voluntary.

In any event these rules have not the slightest application to a trial held under Army Order 81 of 1945 as the terms of Regulation 8 of this order make it quite clear that any document relevant to the issue is admissible, the court giving such weight to it as they think fit".)

The Defending Advocate submitted that there was no case for the accused GIULIETTI to answer, which submission was over-ruled by the Court.

The Defence

First witness: the accused GIULIO GIULIETTI

Witness related that, while on a patrol searching for Indian escaped POW he was attacked by three Indians, beaten up and disarmed.

The following night a patrol was organised which resulted in the capture of an escaped PW after a shooting fracas and the death of one militiaman. On the following morning, 6 Nov 1943, witness was ordered by FRANZINI to command a firing squad: witness imagined this was a German order as German Officers were in the room. Witness protested that he was too sick for this detail, on account of his beating up, but was given a direct order by FRANZINI. Witness took over the firing squad and on the orders of a German Sjt Major marched the party to a neighboring wall. Witness was given a direct order to carry out the shooting by a German officer, which order he obeyed. At the time of giving evidence to the Court witness still considered that this execution was in pursuance of a legal judgement.

Second witness: the accused Bruno FRANCONI:

Witness' sole duty was the running of the cookhouse and the ration store. On the morning of 5 Nov 1943 witness was ordered by Capt AMBROSI to command a firing squad: FRANCESCHINI took witness to the squad and, headed by a German Sjt Major, the squad, escorting an Indian soldier, was marched to the back of the kitchens. There, on the order of FRANCESCHINI, witness ordered the execution. He considered that this was a proper and legal execution and that there had been a trial: German and Italian officers were present at the execution.

In cross examination witness denied any knowledge as to the preliminaries of the execution or as to why the Indian was shot.

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The Court found the accused CIULIETTI and FRACCONI not guilty on the first count. CIULIETTI was found guilty on the second count and a sentence of two years imprisonment was passed upon him.

On 1 May 46 Major General HEYDEMAN, G.O.C. No 2 District confirmed the finding and sentence of the Court.
