

The Supreme Court and the *Genosa* Case: Defining Battered Woman Syndrome *vis-à-vis* Self-Defense in the Philippine Legal System

Rosalyn C. Rayco*

I. INTRODUCTION	314
II. THE CASE: <i>People v. Marivic Genosa</i>	316
A. <i>The Facts of the Case</i>	
B. <i>The Issue</i>	
C. <i>The Ruling of the Court</i>	
D. <i>The Reasoning of the Court</i>	
E. <i>The Dissent</i>	
III. BATTERED WOMAN SYNDROME (BWS)	324
A. <i>Understanding the Battered Woman Syndrome</i>	
B. <i>BWS in Foreign Jurisprudence</i>	
IV. REVIEWING THE DECISION AND ITS IMPLICATIONS ON THE TRADITIONAL NOTION OF SELF-DEFENSE	335
A. <i>Justifying and Mitigating Circumstances</i>	
B. <i>Jurisprudence</i>	
C. <i>BWS according to Genosa</i>	
V. THE SUPERVENING LAW: R.A. 9262	344
VI. CONCLUSION	346

I. INTRODUCTION

Domestic violence, particularly the battering of women, is not uncommon in the Philippine household or society. According to a survey conducted in early 2004 by the Social Weather Stations, about 2.16 million Filipino women or nine percent (9%) of women aged eighteen and older, have experienced physical abuse, with a majority saying the harm was inflicted by

* '06 J.D. cand., Member, Board of Editors, *Ateneo Law Journal*. She co-authored *The Davide Impeachment Case: Restating Judicial Supremacy Over Constitutional Questions*, 48 *ATENELO L.J.* 806 (2004) with Ms. Maricris C. Ang et al.

Cite as 49 *ATENELO L.J.* 314 (2004).

their partners, that is, their husbands, boyfriends and those with whom they have a live-in relationship.¹

Neither is the Philippine culture immune from the traditional and stereotypical notions of men and women. In fact, it is replete with double standards in favor of the male gender, as well as marked differences in the treatment toward men and women.

Men traditionally have been viewed as the protectors of women, and husbands specifically have been thought of as the protectors of their wives. In recent years increasing attention has been given to the fact that these stereotypical notions frequently do not comport with reality. Men often abuse women, both physically and sexually. The man most likely to abuse a woman is her husband, and such abuse often results in serious physical injuries or death.²

When a woman is being battered by any significant person in her life, numerous factors come into play, which make it difficult for the woman to avail of legal remedies. The woman often finds herself trapped in a cycle of violence in which she does not know how to get out of, or why even try to do so. The helplessness of the situation, as well as the fear and shame of becoming a pariah in society added to the humiliation to her family, prevent many women from speaking out against the violence being committed against them.

Some women may even perceive the battering cycle as normal, especially if they grew up in a violent household.³ Other women become so demoralized and degraded by the fact that they cannot predict or control the violence, that they sink into a state of psychological paralysis and become unable to take any action at all to improve or alter the situation.⁴ In addition to these psychological impacts, external social and economic factors often make it difficult for some women to extricate themselves from battering relationships. A woman without independent financial resources who wishes to leave her husband often finds it difficult to do so because of lack of material and social resources.⁵

1. Maria Ceres P. Doyu, *2 Million Filipino women are battered, says survey*, Jan. 24, 2004, available online at http://www.inq7.net/nat/2004/jan/24/tesxt/nat_8-1-p.htm (last accessed on Aug. 25, 2004).
2. Jimmie E. Tinsley, *Criminal Law: The Battered Woman Defense*, 34 *AM. JUR. PROOF OF FACTS* 2d 1.
3. *State v. Kelly*, 97 N.J. 178, 194, 478 A.2d 364, 372 (1984); *BATTERED WOMEN, A PSYCHOSOCIOLOGICAL STUDY OF DOMESTIC VIOLENCE* 60 (M. Roy ed. 1977); D. MARTIN, *BATTERED WIVES* 60 (1981).
4. *Kelly*, 97 N.J. at 195-96, 478 A.2d at 372.
5. *Id.*

As a practical matter, therefore, a battered woman generally can expect no protection from third parties. Her only means of protection is in fact, self-protection. In increasing numbers, battered women are beginning to strike back at their batterers.⁶ When a battered woman does fight back, she often does so during a respite in the beatings, and she often uses force which would appear excessive when considered only in light of the immediate situation.⁷

In such a case, the question that naturally arises is whether or not the woman was justified in taking measures that appear disproportionate in the given circumstance. The consequences of her acts often lead to the filing of criminal charges of parricide, murder, homicide, or physical injuries, against her. On the legal plane, questions arise regarding the applicability of the justifying, exempting, and mitigating circumstances allowed under criminal law, particularly, on the issue of self-defense.

When a battered woman kills her batterer, can she raise the defense of Battered Woman Syndrome (BWS)? Is BWS admissible in court, and is it considered as an exempting, justifying, or mitigating circumstance? What is necessary in order to invoke BWS if such a defense is admissible in court? Should the requisites of self-defense be understood and appreciated *vis-à-vis* the state of mind of a battered woman at the time of the commission of the act?

The landmark case of *People v. Marivic Genosa*⁸ offers plausible answers to these questions. This Note will attempt to analyze the said case with respect to the Supreme Court's treatment of the Battered Woman Syndrome (BWS), and determine its legal implications in criminal law, particularly with respect to the self-defense plea available to an accused. In doing so, this Note will look into the nature of the syndrome⁹ and the character of the defense of BWS, as applied in foreign jurisdictions.

II. THE CASE: *People v. Marivic Genosa*

A. The Facts of the Case

There are two versions of the facts in this case. The conflicting facts arise with respect to the history of violence between the Defendant and her

6. Eisenberg & Seymour, *The Self-Defense Plea and Battered Women*, 14 TRIAL 34 (July 1978).

7. Loraine P. Eber, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 HASTINGS L. J. 895, 926-27 (1981). See Elizabeth Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self-Defense*, 15 HARV. C. R.-C.L. L. REV. 623, 634 (1980).

8. *People v. Genosa*, G.R. No. 135981, Jan. 15, 2004.

husband, and with respect to the events that actually transpired on the night of the husband's death.

The couple lived happily during their first year of marriage, but soon thereafter, they began having violent fights. Relatives of the husband claimed that it was the Defendant who inflicted injuries on her husband, and that she would leave, only to return after begging for his forgiveness. On the other hand, the Defendant said that it was her husband who became cruel and abusive, and that she left him five times, but eventually, he would follow, ask for forgiveness, and beg her to come home. On the night of his death, the husband, who was drunk at the time, tried to attack the Defendant, but she ran into the bedroom. Again, later that evening, in a fit of rage, he threatened the Defendant with a blade cutter that he kept in his wallet, as she tried to run away from him while defending herself with a metal pipe. This fight resulted in the death of the husband that fateful evening.

The next morning, the Defendant, with their two children, left for a pregnancy check-up in Cebu. Days later, the neighbors alerted the police, as well as the owner of the rented house, about a foul odor that emanated from the Defendant's home. The lifeless body of her husband was discovered in the bedroom, with injuries at the back of his head. Meanwhile, the Defendant remained in Manila, where she had gotten a job and worked under an alias. At the time of the husband's death, the Defendant was eight months pregnant with their third child. The couple's daughter was born prematurely one month later.

While she admitted to killing her husband, the Defendant claimed that she did so in self-defense. The Regional Trial Court (RTC), however, found her guilty beyond reasonable doubt of the crime of parricide. And after ruling that the crime was attended with the aggravating circumstance of treachery, the Defendant was sentenced to death. The case was elevated to the Supreme Court for automatic review. Through counsel, the Defendant filed a Motion praying that the Court

allow the exhumation of Ben Genosa and the re-examination of the cause of his death; allow the examination of [Defendant] Marivic Genosa by qualified psychologists and psychiatrists to determine her state of mind at the time she killed her husband; and finally, to allow a partial re-opening of the case *a quo* to take the testimony of said psychologists and psychiatrists.⁹

The Court partially granted the Motion and remanded the case to the RTC for the reception of expert psychological and/or psychiatric opinion on the Battered Woman Syndrome plea.

Thus, the Defendant was examined by two doctors, who both testified as experts in the field of battered women and domestic violence. It was their

9. *Id.* at 21.

expert opinion, based on interviews and tests conducted on the Defendant, that she fit the profile of a battered woman and was afflicted with BWS. The RTC, however, found the self-defense theory untenable, and thus, the capital penalty of death was again imposed.

B. The Issue

Upon elevation on automatic review to the Supreme Court, the pertinent legal issue raised by the Defendant was the following: whether or not she acted in self-defense and in defense of her fetus. Significantly, the Defendant raised the defense of Battered Woman Syndrome, which constitutes self-defense, and prayed for her acquittal from the crime of parricide.

C. The Ruling of the Court

The Supreme Court, through the *ponencia* of Justice Artemio V. Panganiban, affirmed the conviction for the crime of parricide. The Court held that the Defendant was not entitled to exoneration under the self-defense plea because of the absence of unlawful aggression at the time of the commission of the crime. Her BWS plea was not appreciated, because without unlawful aggression, there can be no self-defense, whether complete or incomplete.¹⁰

However, the Court found that two mitigating circumstances attended the killing: diminished will-power,¹¹ and passion and obfuscation.¹² The Court ruled that the severe beatings were a form of cumulative provocation that broke down the Defendant's psychological resistance and self-control, thus diminishing her will-power. Furthermore, as she was eight months

10. *People v. Bato*, 348 SCRA 253, 262 (2000); *People v. Ignacio*, 270 SCRA 445, 453 (1997); *People v. Jotoy*, 222 SCRA 801, 806 (1993); *People v. Sazon*, 189 SCRA 700, 711 (1990).

11. Act 3815, An Act Revising the Penal Code and Other Penal Laws [REVISED PENAL CODE], art. 13(9).

Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of consciousness of his acts.

REVISED PENAL CODE, art. 13(10).

And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

12. *Id.* art. 13(6).

That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

pregnant at the time, the abuse at the hands of her husband overcame her reason and impelled her to vindicate her life and her unborn child's life.¹³

With the two mitigating circumstances, and no aggravating circumstances, the penalty was reduced to six years and one day of *prision mayor* as minimum, to fourteen years, eight months, and one day of *reclusion temporal* as maximum. With the benefit of the Indeterminate Sentence Law,¹⁴ the Defendant was allowed to apply for parole and be released from custody.

D. The Reasoning of the Court

In disposing the case as it did, the Supreme Court began with a discussion of BWS, culling concepts and principles from foreign materials on BWS and pertinent cases decided by foreign courts. The Court, in doing so, undertook an analysis of the common characteristics exhibited by battered women, the cycle of violence constituting BWS, the nature of the BWS plea, and its effect, if any, on the justifying circumstance of self-defense. Next, the Court evaluated the history of abuse between the couple to determine whether the Defendant can be considered as a battered woman. Finally, the Court determined the effect of the battery upon the Defendant, and decided whether or not she was entitled to exoneration from the crime of parricide.

Ultimately, the Court had to answer two questions: whether the Defendant was afflicted with BWS, and whether she was acting in self-defense when she killed her husband. The analysis by the Court was not mutually exclusive. If she was found to be suffering from BWS, the next logical step would be to determine whether she acted in self-defense in killing her husband *vis-à-vis* her psyche as a woman afflicted with BWS. If she was not found to be suffering from BWS, the Court would still evaluate whether, under the circumstances of the case, she was nonetheless entitled to exoneration under the traditional self-defense plea.

To show the history of violence in the marriage, especially the abuse inflicted upon the Defendant, the Defense presented several witnesses. These witnesses consisted of the Defendant's neighbors and relatives, who testified that she was often abused by her husband. The Defendant herself testified

13. *Genosa*, G.R. No. 135981 at 2-3. (The Court stated, "[i]n sum, the cyclical nature and the severity of the violence inflicted upon appellant resulted in "cumulative provocation which broke down her psychological resistance and natural self-control," "psychological paralysis," and "difficulty in concentrating or impairment of memory.")

14. An Act to Provide for an Indeterminate Sentence and Parole for All Persons Convicted of Certain Crimes by Courts of the Philippine Islands; To Create a Board of Indeterminate Sentence and to Provide Funds Therefore; and for Other Purposes, Act No. 4103 (1993).

regarding the abuse that she was subjected to during the years of her marriage. This was further corroborated by testimony from doctors, with whom she sought medical attention every time she was injured or battered. Furthermore, the expert witnesses were called by the lower court to assist it in understanding the psyche of a battered person. On the basis of this evidence, the Supreme Court concluded that there was no doubt that the Defendant was a severely abused person.

Next, the Court determined the effect of the battery. It was here that the Court had to decide, based on the evidence, whether or not the Defendant was afflicted with BWS. On this point, the Court held that she was not afflicted with the syndrome. Pertinently, the Court stated that,

In the instant case, we meticulously scoured the records for specific evidence establishing that appellant, due to the repeated abuse she had suffered from her spouse over a long period of time, became afflicted with the Battered Woman Syndrome. We, however, failed to find sufficient evidence that would support such a conclusion. More specifically, we failed to find ample evidence that would confirm the presence of the essential characteristics of BWS.¹⁵

The Court held that the cycle of violence,¹⁶ particularly the tension-building stage and love-contrition stage, were not sufficiently proven by the Defense. While the Defendant was able to show the tension-building stage that resulted to her husband's death, she failed to show that she had undergone another previous episode with the same pattern. Dissatisfied with the evidence proffered by the Defense, the *ponencia* raised the foregoing questions that the Court believed were not sufficiently answered, to wit:

How did the tension between the partners usually arise or build up prior to acute battering? How did Marivic normally respond to Ben's relatively minor abuses? What means did she employ to try to prevent the situation from developing into the next (more violent) stage?¹⁷

Did she ever feel that she provoked the violent incidents between her and her spouse? Did she believe that she was the only hope for Ben to reform? And that she was the sole support of his emotional stability and well-being? Conversely, how dependent was she on him? Did she feel helpless and trapped in their relationship? Did both of them regard death as preferable to separation?¹⁸

The Court said that the Defense failed to elicit the factual circumstances and thoughts of the Defendant that would show the essential characteristics

15. *Genosa*, G.R. No. 135981 at 56-57.

16. See discussion on Battered Woman Syndrome, particularly the cycle of violence, *infra*.

17. *Genosa*, G.R. No. 135981 at 57.

18. *Id.* at 58.

of BWS. The Defense's expert witnesses, while able to show how the personality of a battered woman usually evolved or deteriorated as a result of repeated and severe beatings inflicted upon her, failed to show the bases for their findings that the Defendant was indeed afflicted with BWS. Based on the foregoing, the Court ruled that she was not suffering from BWS.

Finally, the Supreme Court had to decide whether the plea of self-defense was tenable. In doing so, the Court had to analyze the facts of the case to determine if the three requisites of self-defense were present.¹⁹ Of the three elements necessary for self-defense, the most essential requisite is unlawful aggression.²⁰ In *Genosa*, the Court found that the requisite of unlawful aggression was not present.

The Court held that there was no longer any unlawful aggression when the Defendant killed her husband, as a sufficient time interval had lapsed between the unlawful aggression by her husband and her fatal attack upon him. According to the Defendant's own testimony, she had already been able to escape to their children's bedroom, in which time, her husband was able to cease his attack and go to bed. He no longer then posed a threat to her life or safety. The Court reiterated the principle that aggression, if not continuous, does not warrant self-defense.²¹ Without unlawful aggression, the Defendant was not justified in killing her husband under the self-defense plea, whether complete or incomplete.²²

Where the brutalized person is already suffering from BWS, further evidence of actual physical assault at the time of the killing is not required. Incidents of domestic battery usually have a predictable pattern. xxx Still, impending danger (based on the conduct of the victim in previous battering episodes) prior to the defendant's use of deadly force must be shown. Threatening behavior or communication can satisfy the required imminence of danger. Considering such circumstances and the existence of BWS, self-defense may be appreciated.²³

19. The requisites of self-defense, according to art. 11 of the REVISED PENAL CODE, are the following: first, unlawful aggression; second, reasonable necessity of the means employed to prevent or repel it; and third, lack of sufficient provocation on the part of the person defending himself.
20. *People v. Saul*, 372 SCRA 636, 644 (2001).
21. *Id.* at 645.
22. *People v. Bato*, 348 SCRA 253, 262 (2000); *People v. Ignacio*, 270 SCRA 445, 453 (1997); *People v. Jotoy*, 222 SCRA 801, 806 (1993); *People v. Sazon*, 189 SCRA 700, 711 (1990).
23. *State v. Gallegos*, 104 N.M. 247, 719 P.2d 1268 (1986) (Defendant was convicted of voluntary manslaughter and upon appeal, the Court of Appeals reversed and remanded the case, holding that, given the victim's history of repeated domestic abuse toward defendant, it was necessary to allow the submission of evidence to inquire whether defendant was put in fear by an appearance of an immediate threat

Based on the foregoing, the Court upheld the conviction for the crime of parricide. The Court, while compassionate toward the plight of battered women, explained that it could not amend the law and could only work within the limits provided by Congress.

Being a novel concept in our jurisprudence, the Battered Woman Syndrome was neither easy nor simple to analyze and recognize *vis-à-vis* the given set of facts in the present case. The Court agonized on how to apply the theory as a modern-day reality. It took great effort beyond the normal manner in which decisions are made — on the basis of existing law and jurisprudence applicable to the proven facts. To give a just and proper resolution of the case, it endeavored to take a good look at studies conducted here and abroad in order to understand the intricacies of the syndrome and the distinct personality of the chronically abused person. Certainly, the Court has learned much.

xxx

While our hearts empathize with recurrently battered persons, we can only work within the limits of law, jurisprudence and given facts. We cannot make or invent them. Neither can we amend the Revised Penal Code. Only Congress, in its wisdom, may do so.²⁴

While the Court held that the Defendant was not afflicted with BWS, and that she did not act in self-defense, the Court nonetheless, did not discount the possibility of self-defense arising from BWS. At the end of the decision, Justice Panganiban summarized the essential requirements necessary for BWS to constitute self-defense:

First, each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the appellant and her intimate partner. Second, the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life. Third, at the time of the killing, the batterer must have posed probable — not necessarily immediate and actual — grave harm to the accused, based on the history of violence perpetrated by the former against the latter.²⁵

of danger of death or great bodily injury.); *State v. Walker*, 40 Wash. App. 658, 700 P.2d 1168 (1985) (Defendant was charged with and convicted of second degree assault for stabbing her estranged husband in the back during a confrontation she provoked. The Court ruled that a defendant who suffers from BWS cannot, on that basis alone, claim self-defense. The presence of the syndrome may be used to evaluate the reasonableness of the use and degree of force against a victim when the defendant demonstrates her action was in self-defense, that is, an immediate danger was perceived from the actions of the victim and that the attack was in response to this perception.).

24. *Genosa*, G.R. No. 135981 at 75-76.

25. *Id.* at 76-77.

E. The Dissent

Justice Consuelo Ynares-Santiago wrote a dissenting opinion to this case, which was concurred to by three other justices: Chief Justice Hilario Davide, Jr., Justice Angelina Sandoval-Gutierrez, and Justice Ma. Alicia Austria-Martinez.

The dissenting justices were of the opinion that there was factual basis to conclude that the Defendant, a battered woman for almost fourteen years, was afflicted with BWS, and that it was self-defense that impelled her to kill her husband.

Contrary to the findings of the majority, the dissenting justices stated that the Defense was able to sufficiently establish the three stages of the cycle of violence. The occurrence of more than one tension-building phase was duly proven and the acute battering incident stages were well demonstrated by the severe beatings suffered by the Defendant in the past. It was likewise shown that she would seek shelter with her parents after an acute battering incident, which would begin the final stage of the cycle. When the Defendant would return home, the cycle would start again, thus developing a trauma in her mind, making her believe that a forthcoming attack from her husband would cause her death.

The dissenting justices believed that the Defendant's state of mind was clearly shown in court. Notably, they criticized the requirement set by the *ponencia* to prove the state of mind of the deceased. In requiring proof of the deceased's state of mind, the effect would be that no person would be able to prove self-defense in a battered woman case.

According to the Dissent, the self-defense plea should have been given credence, because the traditional notion of self-defense must be appreciated and re-evaluated *vis-à-vis* the psyche of a person afflicted with BWS. Since a person afflicted with BWS lives in constant fear for her life, once BWS and an impending danger based on the conduct of the deceased in previous battering episodes are established, actual occurrence of an assault is no longer a condition *sine qua non* before self-defense may be appreciated.²⁶ The dissenting justices argued that, in *Genosa*, the requisite of unlawful aggression was replaced by the cycle of violence which culminated into the fatal physical assault, even if the husband did not actually employ violence at the time of the killing.

Also, the fact that the Defendant was found by the *ponencia* to be entitled to mitigating circumstance, supports a finding that the violence and battery committed against her was illegal and unlawful. The dissenting justices agreed that the Defendant was indeed in a state of diminished will-power,

26. *Id.* at 7 (Ynares-Santiago, J., dissenting).

being a battered woman in a constant state of alertness and hypersensitivity to the next phase of an acute battery.

Finally, while the dissenting justices lauded the *ponencia's* recognition of BWS as a valid form of self-defense, they also bewailed its failure to understand the circumstances of the case and its failure to acquit Marivic. In closing, the dissenting justices stated poignantly:

[t]he *ponencia's* acknowledgment of "Battered Woman Syndrome" as a valid form of self-defense, is a noble recognition of the plight of, and a triumph for battered women who are trapped in a culture of silence, shame, and fear. This would however be an empty victory if we deliberately close our eyes to the antecedents of this case. The facts are simple. Marivic was suffering from the "Battered Woman Syndrome" and was defending herself when she killed her husband. Her acquittal of the charge of parricide is therefore in order.²⁷

III. BATTERED WOMAN SYNDROME (BWS)

A. Understanding the Battered Woman Syndrome

The Supreme Court conducted a thorough and extensive analysis of BWS. The pertinent points discussed in the case, as well as additional research on the nature of the plea of BWS in foreign jurisdictions, are summarized hereunder.

I. Basic Concepts: Battered Woman and BWS

The definition of a battered woman is quite broad, including "any woman who has been the victim of physical, sexual, and/or psychological abuse by her partner."²⁸ Thus:

A battered woman has been defined as a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights. Battered women include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the battering cycle at least twice. Any woman may find herself in an abusive relationship with a man

27. *Id.* at 12-13 (Ynares-Santiago, J., dissenting).

28. J. Douglas, *The Battered Woman Syndrome*, in *DOMESTIC VIOLENCE ON TRIAL* 39 (D. Sonkin ed., 1987).

once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman.²⁹

However, it should be noted that not all battered women develop Battered Woman Syndrome.³⁰ A woman may have been subjected to abuse in the past, but it does not immediately follow that the woman is afflicted with BWS. It should also be noted that not all battered women end up killing their husbands or boyfriends. While there has been an absence of research or studies in the Philippines on the number of battered women who have actually killed their husbands, it is undeniable that there are women who have found themselves in such a situation. The *Genosa* case is testimony to such a fact.

Thus, as the problem of battered women has begun to receive more attention, "sociologists and psychologists have begun to focus on the effects [that] a sustained pattern of physical and psychological abuse can have on a woman."³¹ The observation is that "a history of abuse triggers, in some battered women, a form of post-traumatic stress disorder,"³² which results from "exposure to an extreme traumatic stressor" that involves experiencing or witnessing a threat of death or serious injury to oneself or others.³³ Battered Woman Syndrome was therefore formulated as the term referring to such psychological and behavioral reactions exhibited by victims of severe long-term domestic abuse.³⁴

29. *State v. Kelly*, 97 N.J. 178, 193, 478 A.2d 364, 371 (1984); *McMaugh v. State*, 612 A.2d 725, 731 (1992) (citing LENORE WALKER, *THE BATTERED WOMAN*, XV (1979)).

30. John W. Roberts, *Between the Heat of Passion and Cold Blood: Battered Woman's Syndrome as an Excuse for Self-Defense in Non-Confrontational Homicides*, *LAW AND PSYCHOLOGY REVIEW* 135, 138 (Spring 2003); Sarah Crippen Madison, *A Critique and Proposed Solution to the Adverse Examination Problem Raised by Battered Woman Syndrome Testimony in State v. Hennum*, 74 MINN. L. REV. 1023, 1026 (1990).

31. *Kelly*, 97 N.J. at 193-94, 478 A.2d at 371.

32. *Commonwealth v. Crawford*, 429 Mass. 60, 66-67 (1999) (Defendant was convicted of first degree murder, and upon appeal, the judgment was reversed and the case was remanded. The Supreme Judicial Court held that the defendant was entitled to present expert testimony on BWS and post traumatic stress disorder; that the effects of post traumatic stress disorder, or BWS, are not within common experience of ordinary juror; and erroneous exclusion of expert testimony was prejudicial to defendant, and warranted new trial.)

33. AMERICAN PSYCHIATRIC ASSOCIATION, *DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS* 424 (4th ed. 1994).

34. Roberta K. Thyfault, *Self Defense: Battered Woman Syndrome on Trial*, in *REPRESENTING BATTERED WOMEN WHO KILL* 30 (S. Johann & F. Osanka eds., 1989).

Technically, battered person syndrome describes a series of common characteristics that appear in individuals who have been physically and psychologically abused for a long time by a dominating and controlling person in their lives.³⁵ Battered Woman Syndrome is thus a description of identifiable psychological characteristics exhibited by women who have experienced physical and emotional abuse in an intimate relationship over an extended period of time.³⁶

Authorities have stated that BWS is not even currently classified as a separate psychiatric diagnostic category. The syndrome is best understood as being descriptive of an identifiable group of symptoms that characterize the behavior and state of mind of abused women rather than being disease-like in character.³⁷ Research showed that women who find themselves in abusive relationships tend to share certain characteristics, including low self-esteem, passivity, and traditional attitudes about male-female roles. It is the combination of all these symptoms – resulting from sustained psychological and physical trauma compounded by aggravating social and economic factors – which constitutes the syndrome.³⁸

2. Why Women Stay: The Cycle Theory of Violence and Learned Helplessness

For any normal individual, the solution when a woman is being battered by her husband or boyfriend is obvious, that is, to simply leave the abusive relationship. Unfortunately, for a woman afflicted with BWS, the solution is not as simple. Women afflicted with BWS stay in their abusive relationships because of many reasons, which include the belief that the situation will improve, or the belief that there is nothing that the woman can do to stop the violence. These beliefs are embodied and further explained by the Cycle Theory of Violence and the Concept of Learned Helplessness.

The Cycle Theory of Violence purports to describe three distinct phases of what supposedly can be characterized as a typical battering relationship.³⁹ Dr. Lenore Walker,⁴⁰ a clinical psychologist, has identified these three phases

35. Kelly, 97 N.J. at 198; Nguyen v. State, 271 Ga. 475, 520 S.E.2d 907 (1999); Commonwealth v. Pike, 431 Mass. 212, 221 (2000).

36. People v. Torres, 128 Misc. 2d 129, 488 N.Y.S.2d 358 (1985).

37. *Id.*

38. Kelly, 97 N.J. at 198.

39. Alafair S. Burke, *Rational Actors, Self-Defense, and Duress: Making Sense, Not Syndromes, Out of the Battered Woman*, 81 N.C. L. Rev. 211, 222 (December 2002).

40. Dr. Lenore Walker was one of the first pioneers in the field of domestic violence and has published numerous books on BWS. She presented research and studies

as the tension-building phase, the acute-battering incident, and the loving-contrition phase.

During the first phase, which may last for an indefinite time, minor incidents of physical abuse occur as tension builds. This begins with verbal bickering and lower-level physical and emotional abuse and continues with increasing tension between the batterer and victim. Exemplified by the batterer's uncontrollable explosions of violence, the second, or acute-battering stage, occurs when the husband loses control and inflicts a serious beating on his wife. A stage two incident may consist of prolonged beating that seriously injures or even kills the woman. Assuming that the woman survives the stage two incident, stage three is a loving stage. During this stage the husband appears to regret his battering behavior and to be a gentle, kind, and caring man, thereby leading the woman to believe that perhaps he has repented. It is in the loving-contrition phase, when the batterer calms, demonstrates his love, pleads for forgiveness, and promises never to hit again. The contrition stage is said to weaken the battered woman's resolve to terminate the abusive relationship and reinforce her beliefs that the situation will change. Inevitably, however, tensions begin to build and the cycle soon repeats itself.⁴¹

The cyclical nature of battering behavior helps explain why more women simply do not leave their abusers. The loving behavior demonstrated by the batterer during phase three reinforces whatever hopes these women might have for their mate's reform and keeps them bound to the relationship.⁴²

On the other hand, the Concept of Learned Helplessness explains that once battered women learn that they cannot control or prevent the beatings, they come to feel that the violence is unavoidable and that there is no escape from the relationship.⁴³

Walker used these findings to try to dispel the myth that battered women remain in abusive relationships because they are masochists.⁴⁴ Instead, she pointed out that women stay for a number of reasons, which included not only the feeling of helplessness and the reinforcement received during the third stage of the cycle, but also other factors – namely, fear, lack of

regarding battered women or women in abusive relationships, and the effects of intimate-partner abuse.

41. LENORE E. WALKER, *THE BATTERED WOMAN* 18-31 (1979); LENORE E. WALKER, *THE BATTERED WOMAN SYNDROME* 95-104 (1984).

42. R. LANGLEY & R. LEVY, *WIFE BEATING: THE SILENT CRISIS* 112-14 (1977).

43. Kit Kinports, *So Much Activity, So Little Change: A Reply to the Critics of Battered Women's Self-Defense*, 23 ST. L. U. P. L. REV. 155, 168 (2004) (citing LENORE WALKER, *THE BATTERED WOMAN* 45-54 (1979)).

44. *Id.* at 168 (citing LENORE WALKER, *THE BATTERED WOMAN* xv (1979)).

resources, concern for children, love for partner, shame, and lack of external support resulting from the batterer's efforts to isolate them from others.⁴⁵

3. Acceptance and Recognition of BWS

Although not universally embraced by legal commentators, Walker's description of battered women and her labeling them as syndromatic has found widespread acceptance.⁴⁶ It is important to note that psychological research into the effects of abuse has advanced since the publication of Walker's first book dealing with Battered Woman Syndrome.⁴⁷ Even the American Psychological Association endorsed the scientific merits of the Battered Woman Syndrome.⁴⁸ Furthermore, it has been stated in a case that:

Upon careful reflection and analysis, however, it is the opinion of this court that the theory underlying the battered woman's syndrome has indeed passed beyond the experimental stage and gained a substantial enough scientific acceptance to warrant admissibility. xxx [N]umerous articles and books have been published about the battered woman's syndrome; and recent findings of researchers in the field have confirmed its presence and thereby indicated that the scientific community accepts its underlying premises.⁴⁹

45. *Id.* (citing LENORE WALKER, *THE BATTERED WOMAN* 20 (1979)).

46. Burke, *supra* note 39, at 221; Robert F. Schopp *et al.*, *Battered Woman Syndrome, Expert Testimony, and the Distinction Between Justification and Excuse*, 1994 U. ILL. L. REV. 45, 54-55 (criticizing Walker's research because of its lack of control groups, use of self-reporting survey data, and lack of support in data for some of the conclusions drawn from them); David L. Faigman, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619, 630-43 (1986) (critiquing Walker's research on Battered Woman Syndrome).

47. Lenore Walker's book, *THE BATTERED WOMAN*, published in 1979, was one of the earliest publications on BWS. Other books that have been published include the following: Langley & Levy, *WIFE BEATING: THE SILENT CRISIS* 12 (1977); Ewing, *BATTERED WOMEN WHO KILL* (1987); Browne, *WHEN BATTERED WOMEN KILL* (1987); Rosen, *BATTERED WIVES: A COMPREHENSIVE ANNOTATED BIBLIOGRAPHY OF ARTICLES, BOOKS AND STATUTES IN THE UNITED STATES OF AMERICA* (1988); Lenore Walker, *TERRIFYING LOVE: WHY BATTERED WOMEN KILL AND HOW SOCIETY RESPONDS* (1989); Charles Patrick Ewing, *BATTERED WOMEN WHO KILL: PSYCHOLOGICAL SELF-DEFENSE AS LEGAL JUSTIFICATION* (1987); Angela Brown, *WHEN BATTERED WOMEN KILL* (1987).

48. Mary Jane N. Real, *Self-Defense for Battered Woman: Focus on the Admissibility of the Battered Woman Syndrome in Philippine Law and Jurisprudence*, 39 ATENEO L.J. 91, 122 (1994).

49. *People v. Torres*, 128 Misc. 2d 129, 488 N.Y.S.2d 358 (1985) (Defendant was charged with the second-degree murder of her common-law husband and proffered expert testimony concerning BWS. The Supreme Court held that the expert testimony concerning BWS was admissible as having a substantial bearing on the

B. BWS in Foreign Jurisprudence

1. Introduction

It was only in the year 2004 when the Philippine Supreme Court disposed of *Genosa*, which specifically raised the plea of BWS as self-defense. While new in Philippine jurisprudence, the concept of BWS has been generally recognized in foreign jurisdictions as a form of self-defense or, at the least, incomplete self-defense.⁵⁰ This Note takes into consideration certain cases decided by foreign courts, particularly those decided by the United States, being one of the first proponents of BWS. It must also be clarified at the onset, that the defense, as decided in several U.S. cases, would significantly cover non-confrontational situations or instances when the woman is not under attack, *i.e.*, a lull in the beatings or when the batterer is asleep or resting.⁵¹

defendant's justification defense and as meeting the standard for admissibility of expert scientific evidence.)

50. See *Ibn-Tamas v. U.S.*, 407 A.2d 626 (1979); *McLuckie v. Abbott*, 337 F.3d 1193 (2003); *DePetris v. Kuykendall*, 239 F.3d 1057 (2001); *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984); *McMaugh v. State*, 612 A.2d 725 (1992); *State v. Frost*, 577 A.2d 1282 (1990); *State v. Gallegos*, 719 P.2d 1268 (1986); *Lavallee v. Her Majesty the Queen*, 1 S.C.R. 852 (1990); *Reilly v. Her Majesty the Queen*, 2 SCR 396 (1984). See also Erin M. Masson, *Admissibility of Expert or Opinion Evidence of Battered-Woman Syndrome on Issue of Self-Defense*, 58 A.L.R.5d 749 (This annotation has a comprehensive index of cases that consider the admissibility of expert or opinion evidence regarding battered-woman syndrome on the issue of self-defense.)

51. *Real*, *supra* note 48, at 133; see cases involving sleeping husbands: *Robinson v. State*, 417 S.E.2d 88 (1992); *People v. Wilson*, 487 N.W.2d 822, page (1992); *State v. Stewart*, 243 Kan. 639, 763 P.2d 572 (1988); *State v. Hennum*, 441 N.W.2d 793 (1989); *State v. Norman*, 324 N.C. 253, 378 S.E.2d 8 (1989); *State v. Leidholm*, 334 N.W.2d 811 (N.D.1983); *Ex-parte Hill*, 507 So.2d 558 (1987); see also cases involving a lull in the beatings: *Betchel v. State*, 840 P.2d 1 (1992) (the deceased had been lying in bed in a drunken stupor when he was shot by the defendant); *Ibn-Tamas v. U.S.*, 407 A.2d 626 (1979) (Defendant fatally shot her husband while he was crouched on the floor, not knowing that he did not have a gun in his hand, and not knowing that her earlier shot had hit him in the abdomen); *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984) (Defendant stabbed her husband with scissors when he was running toward her, after she left to look for her daughter and after the crowd had separated the fighting couple).

2. Precedents, Legal History and Admissibility of BWS⁵²

Understandably, the foreign courts did not immediately embrace BWS when it was raised as a component of the self-defense plea. Initially, there was hesitation to allow evidence on BWS to prove the state of mind of the accused. As explained above, there were doubts as to the existence of BWS as a syndrome, and further, there was skepticism as to the legal and scientific merits of the defense.

It has been said that "[o]ne of the biggest hurdles for proponents of BWS to cross was the issue of admissibility of expert testimony in cases where an abused spouse killed her mate."⁵³ Eventually, however, BWS was recognized by these foreign courts when they allowed evidence to prove the psyche of a woman afflicted with BWS at the time of the commission of the crime.

The first step towards an objective reasonable standard in battered women cases seemingly appeared in a case decided by the Supreme Court of Washington.⁵⁴ In that case, *State v. Wanrow*,⁵⁵ the female defendant was convicted of the crime of second-degree murder and first-degree assault with a deadly weapon. This case actually dealt with the issue on admission of tapes of private communication, and the corollary issue of whether the trial court was correct in giving instructions to the jury to use the objective standard of self-defense. Upon appeal by the defendant, the Court of Appeals reversed and remanded the case to the trial court. The Supreme Court affirmed the Court of Appeals in stating that such an instruction to use the "objective standard of self-defense" was erroneous and, furthermore, violated a woman defendant's right to equal protection. The Washington Court held that "the respondent was entitled to have the jury consider her actions in the light of her own perceptions of the situation, including those perceptions which were the product of our nation's long and unfortunate history of sex discrimination."⁵⁶

The courts that have considered the question whether to allow expert opinion about battered women are divided in their result, with the trend more in favor of its admissibility.⁵⁷ The first case to admit expert testimony

52. The framework of this discussion was taken from John W. Roberts, *Between the Heat of Passion and Cold Blood: Battered Woman's Syndrome as an Excuse for Self-Defense in Non-Confrontational Homicides*, LAW AND PSYCHOLOGY REVIEW 135, 138 (Spring 2003).

53. JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 243 (2001).

54. Roberts, *supra* note 30, at 143.

55. *State v. Wanrow*, 559 P.2d 548 (1977).

56. *Id.* at 559 (citing *Frontiero v. Richardson*, 411 U.S. 677, 684, 93 S.Ct. 1764, 1769, 36 L.Ed.2d 583 (1973)).

57. Compare the following cases which support admission: *State v. Anaya*, 438 A.2d 892 (1981); *Hawthorne v. State*, 408 So.2d 801 (1982); *Smith v. State*, 247 Ga

on BWS was decided in *Ibn-Tamas v. United States*.⁵⁸ In *Ibn-Tamas*, the defendant had shot and killed her husband, and claimed that she had done so in self-defense. At trial, the defense proffered the testimony of a clinical psychologist, as an expert on battered women, which testimony was excluded by the trial court. The defendant was convicted of second-degree murder while armed. Upon appeal, the Court of Appeals held that expert testimony relating to "battered women" was not inadmissible on grounds that it would invade the province of the jury or that its probative value was outweighed by its prejudicial impact. There, the court reasoned that the admission of the evidence was "relevant to establish the defendant's credibility and helpful to the jury in their understanding of the defendant's rationalization of her actions."⁵⁹ It was additionally found that such testimony was highly probative in that the defendant's "identity as a 'battered wife,' if established, may have had a substantial bearing on her perceptions and behavior at the time of the killing."⁶⁰

Since the *Ibn-Tamas* decision, courts have addressed the admissibility of expert testimony on Battered Woman Syndrome. Moreover, a majority of the courts in over 30 states in the U.S. have recognized the admissibility of

612, 277 S.E.2d 678 (1981); *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984); *Ibn-Tamas v. United States*, 407 A.2d 626 (1979); *State v. Allery*, 101 Wn.2d 591, 682 P.2d 312 (1984); with the following which disallow the expert evidence: *Buhrle v. State*, 627 P.2d 1374 (1981); *State v. Thomas*, 66 Ohio St.2d 518, 423 N.E.2d 137 (1981).

58. *Ibn-Tamas v. United States*, 407 A.2d 626 (D.C. 1979).

59. *Id.* at 631-33. The *Ibn-Tamas* court applied a three part test to determine admissibility of the expert testimony: (1) the subject matter "must be so distinctively related to some science, profession, business or occupation as to be beyond the ken of the average layman;" (2) "the witness must have sufficient skill, knowledge, or experience in that field or calling as to make it appear that this opinion or inference will probably aid the trier in his search for truth;" and (3) expert testimony is inadmissible if "the state of the pertinent art or scientific knowledge does not permit a reasonable opinion to be asserted even by an expert." In applying this test, the court found that the subject matter of the proffered testimony was in fact beyond the ken of the average layman in that such testimony "would have supplied an interpretation of the facts which differed from the ordinary lay perception advocated by the government."

60. *Id.* at 639. Upon remand for a trial court determination of admissibility, under the second and third parts of the test for admissibility, the trial court found that the "defendant failed to establish a general acceptance by the expert's colleagues of the methodology used in the expert's study of 'battered women,'" which finding was upheld on appeal. However, while the defendant in this case was eventually convicted, that has no effect on the ruling that expert testimony on BWS is admissible. In fact, this ruling has not been overturned and is still considered good law.

expert testimony on the Battered Woman Syndrome in relation to self-defense.⁶¹

The watershed moment for BWS as a buttress to a self-defense claim appeared in *State v. Kelly*.⁶² In this case, the defendant was indicted for murder and convicted for stabbing her husband with a pair of scissors. Upon appeal, the Superior Court affirmed the conviction. The New Jersey Supreme Court held, among others, that BWS was relevant to determine the honesty and reasonableness of defendant's belief that she was in imminent danger of death or serious injury and was an appropriate subject for expert testimony; and that exclusion of BWS testimony required reversal and remand for new trial. The court there found that expert testimony was essential to rebut general misconceptions regarding battered women. In fact, any form of testimony relating to Battered Woman Syndrome is directed at helping the judge and jury understand the individualized circumstances under which the homicide took place.⁶³ Thus, in that case, the Court ruled that "it is highly relevant for both judge and jury to be cognizant of any prior abuse that has been suffered by a spouse at the hands of her tormentor."⁶⁴

3. Battered Woman Evidence

By appreciating evidence that a victim or defendant is afflicted with the syndrome, foreign courts convey their understanding of the justifiably fearful state of mind of a person who has been cyclically abused and controlled over a period of time.⁶⁵ In the United States, it is now routine for a court to permit a battered woman to introduce evidence of prior abusive treatment to support a claim of self-defense.⁶⁶ This evidence is usually in the form of expert testimony. Only by understanding these unique pressures that force

61. Real, *supra* note 48, at 132. See *Nixon v. United States*, 728 A.2d 582 (1999) (The principal issue raised in this case was whether the trial judge committed reversible error by permitting the prosecution to introduce expert testimony on the subject of BWS in order to explain the conduct of the complaining witness in response to the alleged battering. The court held that the judge did not abuse his discretion by admitting the challenged evidence.)

62. Roberts, *supra* note 30, at 143, citing *State v. Kelly*, 478 A.2d 364, 372 (1984).

63. *State v. Kelly*, 478 A.2d 364, 371-75 (1984) (discussing the importance of admitting testimony concerning the symptoms and complications, as well as the existence, of Battered Woman Syndrome).

64. *Id.*

65. *Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law*, Symposium on Domestic Violence, 21 HOFSTRA L. REV. 801, 1161 (Summer 1993).

66. Douglas, *supra* note 28, at 39.

battered women to remain with their mates, despite their long-standing and reasonable fear of severe bodily harm and the isolation that being a battered woman creates, can a battered woman's state of mind be accurately and fairly understood.⁶⁷

BWS evidence is admissible to rebut the common myths concerning battered women and to explain the very real dangers faced by women in such relationships.⁶⁸ A Canadian Court ruled that expert testimony is admissible to dispel any stereotypes regarding battered women which may adversely affect the consideration of a claim of self-defense in killing her partner.⁶⁹ Also, as explained in a case decided by a U.S. court, "battered-person evidence, if believed by the trier of fact, may authorize a finding that a reasonable individual who experienced prior physical abuse would reasonably believe that the use of force was necessary on the occasion in question, even though that belief was erroneous."⁷⁰ Hence,

[t]o understand the syndrome properly, however, one's viewpoint should not be drawn from that of an ordinary, reasonable person. What goes on in the mind of a person who has been subjected to repeated, severe beatings may not be consistent with - nay, comprehensible to - those who have not been through a similar experience. Expert opinion is essential to clarify and refute common myths and misconceptions about battered women.⁷¹

[T]he history of violence and the effects of that violence are used in determining whether the defendant has a standard self-defense claim because she acted under circumstances where she honestly and reasonably believed she was in imminent danger of death or serious bodily harm,⁷² and that the

67. *State v. Kelly*, 97 N.J. 178, 478 A.2d 364 (1984).

68. *Weiland v. State*, 732 So.2d 1044 (1999).

69. *Lavallee v. Her Majesty the Queen*, 1 S.C.R. 852 (1990). In this case, the Court ruled:

Expert testimony will assist the fact-finder in drawing inferences in areas where the expert has relevant knowledge or experience beyond that of the lay person. It is difficult for the lay person to comprehend the battered wife syndrome. It is commonly thought that battered women are not really beaten as badly as they claim, otherwise they would have left the relationship. Alternatively, some believe that women enjoy being beaten, that they have a masochistic strain in them. Each of these stereotypes may adversely affect consideration of a battered woman's claim to have acted in self-defence (sic) in killing her partner.

70. *Austin v. State*, 275 Ga. 346, 566 S.E.2d 673 (2002), citing *Smith v. State*, 268 Ga. 196, 486 S.E.2d 819, 97 FCDR 2590 (1997).

71. *Lavallee*, at 852.

72. *Kinports*, *supra* note 43, at 171.

only reasonable alternative was to launch "a pre-emptive strike" against her attacker.⁷³

Finally, several reasons why BWS evidence is relevant in cases involving a battered woman for charges against parricide, murder or homicide were summarized in a recent U.S. case:

First, BWS testimony is relevant to a defendant's credibility because it assists the jury in objectively analyzing the defendant's claim of self-defense by dispelling many of the commonly held misconceptions about battered women; second, BWS is relevant to prove the defendant honestly believed she needed to defend against imminent death or great bodily injury; and third, BWS is relevant for purpose of reasonableness.⁷⁴

4. Conclusion

There are views to the effect that BWS is not a viable defense in itself, but merely a component of other established defenses, such that to speak of a battered woman defense is technically incorrect, since there is no such recognized defense.⁷⁵ Indeed, a reading of foreign cases shows that foreign courts have generally treated BWS as a component of the self-defense plea of an accused.

Mere proof that a woman charged with assault or homicide had previously been battered by the alleged victim does not automatically

73. DRESSLER, *supra* note 53, at 240, 245-46.

74. *People v. Jaspas*, 98 Cal. App. 4th 99, 119 Cal. Rptr. 2d 470 (2002) (A woman was convicted of second degree murder for the shooting death of her boyfriend. An expert witness testified that defendant was a battered woman and suffered from BWS. The trial court instructed the jury on perfect and imperfect self-defense. The Court of Appeal affirmed. The court held that although one instruction on self-defense was flawed, in that it could be read as limiting the testimony of BWS to whether defendant actually and reasonably believed in the necessity to use force, giving the impression that BWS should be considered for self-defense but not imperfect self-defense, other instructions allowed the jury to consider defendant's subjective state of mind and informed the jury that for unreasonable or imperfect self-defense, a defendant is not held to the standard of a reasonable person. When read in conjunction with the entire instruction and the other instructions, and when combined with the arguments of counsel, the potential for confusion in one part of the instruction was dissipated.)

75. Jeffrey Robinson, *Defense Strategies for Battered Women Who Assault Their Mates: State v. Curry* (1981), 4 HARV. WOMEN'S L.J. 161, 162 (1993); *People v. Yaklich*, 833 P.2d 758, 761 (1991) (The central issue on appeal is whether a woman who has hired a third party to kill her abuser but who presents evidence that she suffered from the Battered Woman Syndrome is entitled to a self-defense instruction. We hold that a self-defense instruction is not available in a contract-for-hire situation, even though the accused presents credible evidence that she is a victim of the Battered Woman Syndrome.)

compel an acquittal.⁷⁶ Rather, proof that a criminal defendant was a battered woman is introduced on the theory that such proof is relevant to some other recognized defense.⁷⁷ The syndrome creates a perception in the battered woman so that as to her, the requirements [of self-defense] have been met.⁷⁸ Thus, BWS evidence has been used by foreign courts to prove the existence of the necessary elements of self-defense.

IV. REVIEWING THE DECISION AND ITS IMPLICATIONS ON THE TRADITIONAL NOTION OF SELF-DEFENSE

A. Justifying and Mitigating Circumstances

Criminal law provides possible defenses that are available to an accused. These include the exempting, justifying, and mitigating circumstances. For the purposes of this Note, the discussion will be limited to justifying circumstances, particularly self-defense; and mitigating circumstances, particularly those found in the Defendant's favor – diminished will-power, and passion and obfuscation. Furthermore, for clarity in the discussion, any reference to the concept of self-defense prior to the *Genosa* decision will be referred to as "traditional self-defense" or the "traditional concept or notion of self-defense."

I. Self-Defense

Briefly, self-defense is considered as a justifying circumstance – such that, in the eyes of the law, there is no crime that has been committed. Justifying circumstances are those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from criminal and civil liability.⁷⁹ This finds support under both the Positivist and Classical theory.⁸⁰ Hence,

[t]he law on self-defense embodied in any penal system in the civilized world finds justification in man's natural instinct to protect, repel, and save his person or rights from impending danger or peril; it is based on that

76. Robinson, *supra* note 75, at 162.

77. Tinsley, *supra* note 2, at 1.

78. *State v. Williams*, 787 S.W.2d 312.

79. I LUIS B. REYES, THE REVISED PENAL CODE 142 (2001).

80. *People v. Castanes*, 92 SCRA 571. ("No crime is committed because under the Positivist theory, such action is an exercise of a right to defend oneself against an unwarranted aggression; under the Classical theory, on the other hand, the fact that it is impossible for the State to come to the aid of all its citizens justifies an innocent individual in resisting an unlawful aggression and his/her act will not be considered a legal infraction.)

impulse of self-preservation born to man and part of his nature as a human being.⁸¹

There are three requisites of self-defense: unlawful aggression; reasonable necessity of the means employed to prevent or repel it; and lack of sufficient provocation on the part of the person defending himself.⁸²

It is a statutory and doctrinal requirement that for the justifying circumstance of self-defense, the presence of unlawful aggression is a condition *sine qua non*.⁸³ If there is no unlawful aggression, there is nothing to prevent or repel. The second requisite of defense will have no basis.⁸⁴ Unlawful aggression presupposes an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.⁸⁵ Furthermore, the unlawful aggression must come, directly or indirectly, from the person who was subsequently attacked by the accused.⁸⁶ Pertinently, under the traditional notion of self-defense, when there is a lull period, or if the accused has managed to run away from the victim-aggressor, any attack thereafter cannot be said to have been made to repel unlawful aggression.

The second requisite is that there must be reasonable necessity of the means employed to prevent or repel it. There must be a necessity of the course of action taken by the person making a defense, and there must be a necessity of the means used. Both must be reasonable.⁸⁷ Whether or not the means employed is reasonable will depend upon the nature and quality of the weapon used by the aggressor, his physical condition, character, size and other circumstances, and those of the person defending himself, and also the place and the occasion of the assault.⁸⁸

Finally, there must have been a lack of sufficient provocation on the part of the person defending himself. This means that,

either no provocation was given at all; or even if provocation was given, it was not sufficient; or when, even if the provocation was sufficient, it was not given by the person defending himself; or when, even if a provocation

was given by the person defending himself, it was not proximate and immediate to the act of aggression.⁸⁹

For a successful self-defense plea, these three requisites must be complied with. Absent one or more requisites, an act cannot be considered as constituting self-defense. Of course, the absence of the last two requisites and the presence of the first requisite may result in an incomplete self-defense plea. However, this is in the nature of a mitigating circumstance⁹⁰ which will only result in a reduction of the penalty imposed, depending on the facts of the case and other attendant modifying circumstances, if any.

When unlawful aggression on the victim's part is alone established, incomplete self-defense is so appreciated merely as an ordinary mitigating circumstance under Article 13, paragraph 1, of the Code. When such unlawful aggression is coupled with still another element of self-defense, incomplete self-defense becomes a privileged mitigating circumstance, referred to in Article 69 of the Revised Penal Code, that entitles the accused to a reduction of the penalty imposed by law for the felony by one or two degrees depending on the conditions and circumstances therein obtaining.⁹¹

2. Diminished Will Power and Passion and Obfuscation

A mitigating circumstance is that which, if present in the commission of the crime, does not entirely free the actor from criminal liability, but serves only to reduce the penalty.⁹² Accordingly, the law provides for many mitigating circumstances,⁹³ however, attention will be given to those discussed in the *Genosa* case.

The mitigating circumstance of passion or obfuscation⁹⁴ requires that the accused acted upon an impulse, and that the impulse was so powerful that it

81. *People v. Boholst-Caballero*, 61 Phil. 180, 185 (1975).

82. REVISED PENAL CODE, art. 11(1).

83. *People v. Sazon*, 189 SCRA 700, 704 (1990).

84. REYES, *supra* note 79, at 146 (2001).

85. *People v. Rey* 172 SCRA 149, 156 (1989).

86. *People v. Gutierrez*, 53 Phil. 609, 611 (1929).

87. REYES, *supra* note 79, at 171.

88. *Id.* at 178.

89. *Id.* at 184 (citing decisions of the Supreme Court of Spain of Mar. 5, 1902 and Apr. 20, 1906).

90. REVISED PENAL CODE, art. 13(1).

Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.

91. *De Leon v. Luna*, 244 SCRA 758, 763 (1995) cited in *People v. Ignacio*, 270 SCRA 445, 451 (1997).

92. REYES, *supra* note 79, at 241.

93. REVISED PENAL CODE, art. 13.

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify or to exempt from criminal liability in the respective cases are not attendant.

naturally produced passion and obfuscation in him.⁹⁵ There must be an act, both unlawful and sufficient to produce such a condition of mind, and that the said act was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his normal equanimity.⁹⁶ Jurisprudence has provided that a lapse of more than 24 hours,⁹⁷ or several hours,⁹⁸ or even at least half an hour,⁹⁹ would not allow for the mitigating circumstance of passion and obfuscation.

The mitigating circumstance of diminished will-power¹⁰⁰ requires that the illness of the offender must diminish the exercise of his will-power, and that such illness should not deprive the offender of consciousness of his acts. This legal provision refers only to diseases of pathological state that trouble

2. That the offender is under eighteen years of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.

3. That the offender had no intention to commit so grave a wrong as that committed.

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (*delito*), his spouse, ascendants, or relatives by affinity within the same degrees.

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;

8. That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense, or communications with his fellow beings.

9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.

10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

94. *Id.* art. 13(6).

95. REYES, *supra* note 79, at 146.

96. *People v. Gravino*, 122 SCRA 123, 134 (1983).

97. *People v. Sarikala*, 37 Phil. 486, 490 (1918).

98. *People v. Aguinaldo*, 92 Phil. 583, 588 (1953).

99. *People v. Matbagon*, 60 Phil. 887, 890 (1934).

100. REVISED PENAL CODE, art. 13(9).

the conscience or will.¹⁰¹ It would seem that a diseased mind, not amounting to insanity, may give place to mitigation.¹⁰²

And finally, the law provides a catch-all phrase of any other circumstance of a similar nature and analogous to those abovementioned.¹⁰³

B. Jurisprudence

Philippine jurisprudence is no stranger to cases involving the crimes of parricide, murder, or homicide involving married individuals or live-in partners. The survey of Supreme Court decisions on self-defense shows that the Court has had little opportunity to consider the case of battered women, or even of female defendants. As a result, the self-defense doctrine developed by the Court has evolved from a male perspective.¹⁰⁴ At the very least, the self-defense doctrine has evolved from a reasonable-person perspective. It must be noted, however, that a reasonable person does not think and act in the same manner as a battered woman. Clearly, "the reasonable person standard cannot be made as the measuring stick to determine whether the battered woman acted in justifiable self-defense in saving herself from the attack."¹⁰⁵

There are numerous decisions involving women who had killed their husbands or partners under varying circumstances, and who claimed that they did so in self-defense.¹⁰⁶ The Supreme Court disposed of these cases in

101. REYES, *supra* note 79, at 310.

102. *Id.*

103. REVISED PENAL CODE, art. 13(10).

104. Real, *supra* note 48, at 128.

105. Mervin Magnus Manapsal Mateo, *Adapting the Battered Woman and Child Syndrome as a Form of Self-Defense in the Philippines*, J.D. Thesis, Ateneo de Manila School of Law (2001), at 26.

106. See *People v. Ignacio*, 270 SCRA 445 (1997) (The accused was charged with parricide for killing her fourth husband with a wooden club or *palo-palo*. The Supreme Court rejected the self-defense claim of the accused and affirmed her conviction for the crime of parricide. The Court ruled that there was no unlawful aggression, therefore, the requisites for self-defense were not present.); *People v. Padiernos*, 69 Phil. 484 (1976) (The Supreme Court affirmed the conviction of a woman for the crime of parricide, ruling that her plea of self-defense was untenable and that her version of the incident highly incredible and improbable. The nature and location of the stab wounds indicate that appellant inflicted them while she was behind or at the back of the deceased. After the stabbing incident, she did not surrender to the authorities, but fled and went hiding and surrendered only after four years. Such conduct is inconsistent with and casts doubt appellant's claim of self-defense.); *People v. Boholst-Caballero*, 61 Phil. 180 (1974) (The Supreme Court in this case reversed the conviction of a woman for killing her husband when it ruled that all the elements of self-

varying ways, depending on the absence or existence of the requisite elements for self-defense. It is important to note that in many of these cases, the women were subject to violence and abuse by their husbands or boyfriends.

The peculiar circumstances of battered wives were considered by the Supreme Court only in the cases of *People v. Boholst-Caballero* and *People v. Canja*. In the former, the court acquitted the defendant of parricide, and in the latter, the defendant was convicted of the same crime.¹⁰⁷

In *Boholst-Caballero*, the marriage between the couple was marked with quarrels, as well as maltreatment and beatings inflicted against the defendant-wife. The couple eventually separated. One evening, while caroling with friends, the defendant was accosted by her husband who accused her of

defense were present in the said case.); *People v. Aglibut*, 29 SCRA 804 (1969) (The Supreme Court rejected the self-defense claim of a wife who killed her husband. The Court ruled that where the deceased was unarmed and had not committed any act of aggression against his wife, the accused, as there were no visible signs of injuries on her person nor did she complain of any injuries when she executed her statement, nor could she claim lack of sufficient provocation, assuming that her deceased husband assaulted her upon finding her in a tryst with her paramour at their very home, her claim of self-defense was without merit.); *People v. Canja*, 86 Phil. 518 (1950) (This case rejected the self-defense claim of the wife charged with the crime of parricide. The Court rationalized that the husband may have been unworthy, a rascal, and a bully, but that was no excuse for murdering him. His badness was not even considered a mitigating circumstance.); *People v. Orpiana*, 70 Phil. 522 (1940) (The Supreme Court acquitted the accused in this case of the crime of parricide upon a finding of self-defense. The irritability and cruelty of the deceased, his insufferance and jealousy, are facts testified to by the accused and are not disproved. And a woman, though worn out and made unhappy by conjugal sufferings and cruelties but clinging fast to dear life, has every right to defend her own self in the face of a real menace, whether coming from a stranger or from an irate husband.); *People v. Bingaan*, 48 Phil. 925 (1926) (The Supreme Court acquitted the wife who had killed her husband after finding that there was unlawful aggression. It ruled that where the defendant was charged with the crime of parricide and pleaded self-defense, and the act was committed in the home of the deceased some time during the night, and when there was no light in the house, and there were no eyewitnesses, and all of the six wounds which the defendant inflicted were on the left side of the deceased, and where the evidence tends to show that there was a struggle between the husband and the wife, and that she honestly thought that her own life was in serious danger, and the record shows that her height was only 4 feet and 6 inches, and her weight 37 kilos, all of such facts, together with the surrounding circumstances, are sufficient to create a reasonable doubt as to the guilt of the defendant, resulting in her acquittal.).

107. Real, *supra* note 48, at 128.

prostituting herself and threatened to kill her. He slapped her, pushed her to the ground, and choked her, such that the defendant had to protect herself by grabbing a knife that her husband kept at his waistline. Based on the proven facts in *Boholst-Caballero*, all the elements of self-defense were present, thus entitling the defendant to an acquittal.

On the other hand, in the *Canja* case, self-defense was not proven, thus the defendant was convicted by the Court. In this case, the defendant-wife swore that she suddenly awoke one night when a man was strangling her and that in her defense, she grabbed a piece of wood and gave the assailant two blows on the face. When she was able to free herself, she lit a lamp and discovered she had killed her husband. The Court rejected her self-defense plea on the following grounds, among others: the wounds she inflicted on her husband consisted of eleven incised wounds, contrary to her allegation of inflicting only two blows, she failed to mention the piece of wood to the police; and she pleaded guilty to the crime in the preliminary investigation. The Court held that "[a]ppellant must be declared to have feloniously extinguished the life of her husband. He may have been unworthy. He may have been a rascal and a bully; but that is no excuse for murdering him. His badness is not even a mitigating circumstance."¹⁰⁸ While the Court convicted the defendant in *Canja*, it is interesting to note that the Concurring Opinion seemingly sympathized with the plight of a battered woman when it stated,

[t]he violence with which appellant killed her husband reveals the pent-up righteous anger and rebellion against years of abuse, insult, and tyranny seldom heard of. Considering all these circumstances and provocations, including the fact as already stated, that her conviction was based on her own confession, I repeat that the appellant is deserving of executive clemency, not of full pardon but of a substantial if not a radical reduction or commutation of her life sentence.¹⁰⁹

C. BWS according to *Genosa*

The Supreme Court, in the *Genosa* case, allowed the admission of expert evidence to prove the existence of "Battered Woman Syndrome" and its effect on the psyche of a battered woman. Essentially, the Court held that BWS is a viable self-defense plea, provided that the peculiar circumstances of BWS *vis-à-vis* the requisites necessary for self-defense are met. In the event that the defense fails to prove self-defense in light of BWS, or fails to prove that the accused is afflicted with BWS, the Court, however, may treat the

108. *People v. Canja*, 86 Phil. 518, 521 (1950).

109. *Id.* at 522 (Montemayor, J., concurring).

symptoms arising from BWS as mitigating circumstances, depending on the facts of the case.¹¹⁰

In other words, according to the Supreme Court, BWS can be either a justifying or mitigating circumstance. If self-defense is not duly proved by the defense, the effect of the battery inflicted by the batterer, as well as other attendant circumstances in each case, may properly be considered as mitigating circumstances.

In *Genosa*, the defense was not able to prove that the defendant was suffering from BWS. Even if the defense was able to prove BWS, the Court however cautioned that it was not in itself a justification for battered women to kill their husbands. BWS must be appreciated with reference to the requisites of self-defense. In this case, the Court rejected the self-defense plea because there was no unlawful aggression at the time when the Defendant killed her husband.

The Court went on to say that it did not preclude the possibility that BWS can be used to support a viable self-defense plea. In doing so, the Supreme Court laid down certain conditions when BWS may be successfully pleaded. These requirements can be summarized and explained as follows:

*First, each of the phases of the cycle of violence must be proven to have characterized at least two battering episodes between the appellant and her intimate partner.*¹¹¹ The Defense is tasked with the responsibility of proving each and every phase in the cycle of violence, and that the cycle occurred more than once. Furthermore, the Defense must prove that the defendant was afflicted with BWS. The state of mind of both the defendant and deceased must be shown in order to assist the court in determining the existence of BWS.¹¹² This is where the testimony of both the defendant and the expert witnesses is most critical. The defendant must be able to elicit factual circumstances and

110. Curiously, the Court in this case ruled that Marivic was not afflicted with BWS, however the Court found that she was suffering from "symptoms arising from BWS" which gave rise to the mitigating circumstances that were eventually granted in her favor. The Court seems to impliedly say that a battered woman, while not afflicted with BWS for failure to prove the cycle of violence and state of mind of the accused, may be afflicted with some symptoms of BWS that may be considered mitigating circumstances. There seems to be a very fine line, then, between BWS as a mitigating circumstance and as a justifying circumstance. This of course, may be a result of an over-analysis of the case, but clarification on this point would be enlightening.

111. *People v. Genosa*, G.R. No. 135981, Jan. 15, 2004, at 76 (emphasis supplied).

112. Pertinently, reference can be made to the questions raised by the Supreme Court in this case that were left unanswered by Marivic's counsel. These questions should be answered by the Defense, in addition to the requisites and symptoms necessary to prove BWS. See discussion regarding the Reasoning of the Court, *supra*.

thoughts regarding the violence she had to endure; and the expert witnesses must be able to convincingly show to the court their bases for concluding that a defendant is afflicted with BWS.

In the *Genosa* case, the Court was dissatisfied with the answers given by the Defendant regarding the tension between the couple, or the response of the Defendant to the abuse, or the means employed by her to prevent the situation from worsening. Furthermore, the Court felt there were unanswered questions with respect to the Defendant's own feelings toward the husband's abuse toward her, as well as the husband's feelings toward the Defendant. The Court was not convinced as to the state of mind of either the Defendant or the deceased husband.

*Second, the final acute battering episode preceding the killing of the batterer must have produced in the battered person's mind an actual fear of an imminent harm from her batterer and an honest belief that she needed to use force in order to save her life.*¹¹³ *Third, at the time of the killing, the batterer must have posed probable — not necessarily immediate and actual — grave harm to the accused, based on the history of violence perpetrated by the former against the latter.*¹¹⁴ These last two pronouncements of the Supreme Court will be discussed together, as they both relate to the requisites of self-defense.

As reiterated in this Note, BWS must be evaluated *vis-à-vis* the requirements of self-defense. To prove self-defense, the following requisites are necessary: unlawful aggression, reasonable means to repel the unlawful aggression, and lack of participation in the unlawful aggression by the accused. The Defense is tasked to prove all these elements in relation to the state of mind of the accused as a result of BWS.

The requisite of unlawful aggression shall be satisfied if there was an acute battering episode preceding the killing of the batterer and there was the concurrent state of mind of the defendant: an actual fear of imminent harm and an honest belief to save one's life. This is, essentially, where the Court took a step towards appreciating BWS in relation to the self-defense requirement.

Thus, in case a person is found to be afflicted with BWS, evidence of actual physical assault is not required. The Court stated that where the brutalized person is already suffering from BWS, further evidence of actual physical assault at the time of the killing is not required. Incidents of domestic battery usually have a predictable pattern.¹¹⁵ As in the traditional self-defense plea, the Court still required unlawful aggression; but in light of BWS, unlawful aggression can refer to an "impending danger (based on the

113. *Genosa*, G.R. No. 135981, at 76-77 (emphasis supplied).

114. *Id.* at 77 (emphasis supplied).

115. *Id.* at 61-62.

conduct of the victim in previous battering episodes) prior to the defendant's use of deadly force."¹¹⁶

Furthermore, the Court explained that "threatening behavior or communication can satisfy the required imminence of danger."¹¹⁷ Under traditional self-defense, unlawful aggression presupposes an actual, sudden and unexpected attack, or imminent danger thereof, and not merely a threatening or intimidating attitude.¹¹⁸ As distinguished from the traditional notion of self-defense, once a woman proves that she is afflicted with BWS, unlawful aggression can be in the form of threatening behavior or communication, provided there was the existence of probable, grave harm.

Finally, the requisites of reasonableness and lack of provocation on the part of the defendant must be appreciated with BWS and in light of the woman's state of mind at the time of the commission of the crime. While the *Genosa* decision did not discuss these last two requirements of self-defense, presumably, resort on the interpretation of the same, *vis-à-vis* BWS, can be made to foreign jurisprudence. Hence, the requirements of reasonableness, and lack of provocation on the part of the defendant, should be appreciated in line with the defendant's state of mind: an actual fear of imminent harm and an honest belief to save one's life.

The element missing in the *Genosa* case, preventing the acquittal of the Defendant, was the element of unlawful aggression. The Supreme Court ruled that since there was no unlawful aggression, the Defendant could not be entitled to an acquittal. Contrary to the opinion of the *ponencia*, the Dissent, however, was of the opinion that the cycle of violence replaced the unlawful aggression in this case.¹¹⁹

V. THE SUPERVENING LAW: R.A. 9262

The *Genosa* case was decided on 15 January 2004, and has been hailed by many as a landmark decision with respect to women's rights. In *Genosa*, the Court ruled that the symptoms of BWS were mitigating factors. However, as explained in the above discussion, the Court enumerated the necessary preconditions before a battered woman can be acquitted of the charge against her.

116. *Id.* at 62.

117. *State v. Walker*, 40 Wash. App. 658, 700 P.2d 1168 (1985).

118. *People v. Rey* 172 SCRA 149, 156 (1989).

119. Both views are actually arguable, as the difference between the *ponencia's* reasoning and the dissenting justices' reasoning resulted from differing levels of appreciation of the facts in this case.

On 8 March 2004, both Houses of Congress passed Republic Act No. 9262,¹²⁰ also known as the Anti-Violence Against Women and Their Children Act of 2004. This bill had been in the legislative mill for several years before it finally became enacted into law and was a consolidation of several bills from both Houses.¹²¹ It is significant to note that in the law there is a provision regarding Battered Woman Syndrome.

Interestingly, aside from defining the terms "battery"¹²² and "Battered Woman Syndrome,"¹²³ the law also provides for the effect of a finding of Battered Woman Syndrome. Under this new law, a woman found suffering from the syndrome will not incur criminal and civil liability, even in the absence of any of the elements of self-defense.¹²⁴ Incidentally, this provision

120. An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefore, and for Other Purposes, Republic Act No. 9262 (2004).

121. House Bill 5516, House Bill 6054, and Senate Bill 2723.

122. Republic Act No. 9262, §3(b).

(b) "Battery" refers to an act of inflicting physical harm upon the woman or her child resulting to the physical and psychological or emotional distress.

123. *Id.* §3(c).

(c) "Battered Woman Syndrome" refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.

This definition was taken from the Senate version of the bill. Pertinently, the original wording of the definition was as follows:

Battered Woman Syndrome refers to a pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse. The four general characteristics of this syndrome are: the woman believes that the violence was her fault; the woman has an inability to place the responsibility for violence elsewhere; the woman fears for her life and/or her children; and the battered woman has an irrational belief that the abuser is omnipresent and omniscient.

124. *Id.* §26.

Battered Woman Syndrome as a Defense. — Victim-survivors who are found by the courts to be suffering from Battered Woman Syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code.

In the determination of the state of mind of the woman who was suffering from Battered Woman Syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychiatrists/psychologists.

on Battered Woman Syndrome was lifted *verbatim* from the Senate version of the bill.¹²⁵

The effects of such a law on the *Genosa* decision and on the treatment of BWS as a viable defense for battered women are debatable. Of course, this is properly the subject matter of another dissertation, and the Author of this Note will limit her observations by simply raising the following questions: does the law impliedly repeal the jurisprudential rules in *Genosa* that BWS is a component of self-defense and must be duly proven in light of the requisites of self-defense? By not requiring proof of the elements of any justifying circumstances, did the law in effect create an entirely new defense, separate and distinct from self-defense? Can the law be reconciled with the *Genosa* decision, or are they completely irreconcilable? Which shall govern in such a case – the new law, or the *Genosa* decision?

VI. CONCLUSION

Domestic violence and the battering of women are realities that society, particularly the legal community, must face and address. Research in the past two decades has shown that there is empirical and scientific evidence proving the existence of Battered Woman Syndrome. In the United States and other jurisdictions, BWS has been recognized and admitted under a self-defense plea.

In the Philippines, prior to the *Genosa* decision, the concept of Battered Woman Syndrome as a component of the self-defense plea was both unexplored and tenuous. Also, the traditional self-defense plea appeared inadequate to answer the unique circumstances that battered women face in their abusive relationships with their batterer-partners. With the *Genosa* ruling, the Court made a positive step towards the recognition of the plight of battered women.

It is of course understood that being a battered woman, in itself, will not entitle an accused to exoneration. Moreover, being a victim of domestic violence is not an excuse for any woman to willfully kill her husband or significant other, absent the factors that would show the existence of BWS. However, it should be recognized that women afflicted with BWS think and act in ways different from that of a normal individual. It would be unfair and unjust to merely rule on the traditional self-defense plea without considering the psyche of a battered woman.

125. An Act Defining Violence Against Women and Members of the Family, Prescribing Penalties Therefore, Providing for Protective Measures for Victims, and for Other Purposes, SENATE BILL NO. 2723, §13, 12th Cong, 3d Sess (Dec. 10, 2003). (The authors of the Senate Bill were Senators Legarda, Aquino-Oreta, Ejercito Estrada, Biazon, Pangilinan, Villar Jr., De Castro and Angara.)

Indeed, the Court took its first steps in uncharted territory when it promulgated the judgment in the *Genosa* case. It ruled correctly that BWS should not be a defense in itself, but a mere component in determining if the necessary requisites of self-defense are present. In other words, the requisites, especially the unlawful aggression, should be appreciated in the context of BWS. The state of mind of a woman afflicted with BWS is such that she honestly believes that aggression was forthcoming, based on prior incidents of violence.

It can be argued that the Court, in requiring proof of both the state of mind of the batterer-victim and accused-battered woman, may have set very stringent requirements for proving BWS. The Dissent may be correct in saying no one would be able to successfully prove BWS under such stringent conditions. While the Court set down the necessary requisites, it seemed to turn a blind eye to the facts of the case. A woman afflicted with BWS has a different perception from a normal individual, and the cycle of violence that she is subject to as a battered woman is, in effect, the unlawful aggression that the law requires in order to uphold a self-defense plea. The Court need not amend the law on self-defense before it can exonerate the defendant on the basis of self-defense; it merely has to expand the meaning of unlawful aggression, to include the perception of battered women.

Whatever the criticism, the Court should be lauded for having laid down sound conditions that must be complied with before a self-defense plea can exonerate a woman found to be suffering from BWS. It is simply a matter of applying the same to the facts of the case. For it is true, that [t]o require the battered person to await an obvious, deadly attack before she can defend her life "would amount to sentencing her to 'murder by installment.'"¹²⁶

The day that a battered woman is exonerated under a self-defense plea because she is suffering from BWS, and who honestly believed that an imminent attack on her life was about to take place, even in the absence of actual violence by the deceased-batterer at the time of the commission of the act, would be a day that truly marks a triumph for women's rights. Equal protection of the laws is a guarantee to all, and battered women are no exception.

126. *State v. Gallegos*, 104 N.M. 247, 719 P.2d 1268 (1986).