

LEGAL AND CONCEPTUAL FRAMEWORK OF BATTERED WOMAN SYNDROME AS A DEFENSE *

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I. INTRODUCTION

In September 2011, a woman by the name of Shiela Macapugay hid a .38 caliber gun in the lining of her bag that was undetected by the security in the mall where her husband was working. She fired a fatal shot at her husband and in her attempt to kill herself immediately thereafter, also killed the security guard who tried to stop her from committing suicide.¹

The demise of Macapugay's husband was not a simple but common occurrence. Her husband abandoned her and their child to be with another woman, and denied them of support. These are acts of violence against women protected by Republic Act No. 9262, otherwise known as the *Anti-Violence*

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¹ Penelope Endozo, *Woman scorned kills husband*, Phil. Daily Inquirer, Sept. 14, 2011, available at <http://newsinfo.inquirer.net/59455/woman-scorned-kills-husband>.

Against Women and Children Act of 2004. Sheila Macapugay is now facing charges of both parricide and murder for the tragedy. If convicted, she will suffer a fate of imprisonment, *reclusion perpetua*. Fortunately, because of RA 9262, she has a defense available. Her counsel may present evidence that she was suffering from Battered Woman Syndrome (BWS), a justifying circumstance under RA 9262.

Notably, years ago before there was RA 9262, a policewoman, who was battered by her husband, shot him. She pleaded guilty, and years later, was released on parole. Such case would have been a good test case for BWS as a defense but there was no RA 9262 then.

This paper will discuss the legal concepts, as well as the issues and problems of BWS as a legal defense, and the role of psychiatrists, psychologists, *barangay* officials and counselors. Macapugay's case has been witnessed by society and jurisprudence since time immemorial, and now, it is a good test case to use the innovations created in RA 9262.

II. THE BATTERED WOMAN SYNDROME (BWS)

A. Legislative History

RA 9262,² otherwise known as the *Anti-VAWC Act*, was passed after almost a decade of advocacy by women's groups, survivors of violence, and mostly female legislators. In the House of Representatives (HOR), two bills on domestic violence were passed, which shows the diversity of women's groups. One bill provided for protection of women in intimate relations only, while the other, the *Anti-Domestic Violence Bill*, gave protection to both men and women who are victims of domestic violence as well as household members. In the

² Took effect on March 27, 2004. The first case filed under this law is the Petition for Temporary and Permanent Protection Order in Melissa Mercado-Martel versus Robert Puyat Martel, Regional Trial Court of Makati City. Presiding Judge Rebecca Mariano issued the first Temporary Protection Order under this law.

Senate, what expedited the legislative process was the commitment of Senate President Franklin M. Drilon that it would be passed in the 13th Congress, and the active lobbying by the National Commission on the Role of Filipino Women³ and women's rights groups. BWS was included in RA 9262 upon the direction of Senator Luisa Estrada, who is a psychiatrist.

B. Definition

Section 3 of RA 9262 defines BWS as a “scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse.” It covers all forms of abuse (physical, emotional, psychological, verbal) for as long as these result to a “pattern of psychological and behavioural symptoms.”

BWS is a provision that was written in the substitute Senate Bill. It did not appear in the two bills on domestic violence that were passed in the HOR. During the drafting of the substitute Senate Bill, (called a “substitute” because it became the Bill that was reported by the Chairperson to the Senate) the author of this article, who was then the Consultant on Women's Rights to Senate President Drilon, and Atty. Myrna S. Feliciano, who was a Commissioner of the National Commission on the Role of Filipino Women, decided to include two proposed provisions: (1) Atty. Guanzon's inclusion of BWS as a justifying circumstance which can acquit the accused woman,⁴ and (2) Atty. Feliciano's inclusion of a provision on disqualification of the abuser of a woman with BWS from having custody of their common child.⁵ The latter envisions a situation when a woman with BWS is fighting a custody battle with her husband or the father of her child, and the circumstance of her being affected by the syndrome might be used against her suitability to be a custodial parent.

³ The Chairperson of the National Commission on the Role of Filipino Women when R.A. No. 9262 was passed was Aurora Javate-de Dios, former Dean of Miriam College.

⁴ Rep. Act No. 9262, §26 (2004).

⁵ Rep. Act No. 9262, §28 (2004).

During the Bicameral Conference, Representative Imee Marcos added the words "scientifically-defined pattern" to the definition of BWS, which can be problematic in the future since BWS is not yet defined in psychiatry books. Some judges may also tend to have a strict interpretation of this definition since it requires a "scientifically-defined pattern" of abuse. The World Health Organisation also lists BWS in its *International Classification of Diseases*. Based on an expert in the field, BWS was defined merely as "the development of characteristic physical, psychological and social abnormalities and symptoms, such as depression, low self esteem and isolation, which follow the direct personal experience of a series of violent acts by an intimate partner."⁶ The additional requirement of scientific validity can be seen in similar statutes in the United States.

However, our Supreme Court has defined the term "battered woman" in *People v. Marivic Genosa*,⁷ as a woman "who is repeatedly subjected to any forceful physical or psychological behaviour by a man in order to coerce her to do something he wants her to do without concern for her rights." The Court further said that "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 once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman."⁸ The Court added that BWS is "characterized by the so-called 'cycle of violence,' which has three phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving (or, at least, nonviolent) phase."⁹

With this categorical definition, women's rights lawyers and advocates should now be able to hurdle the problem of definition as applicable to our domestic law. The *Genosa* decision is the only judicial precedent we have on BWS so far. In that case, the Supreme Court used BWS only as a mitigating circumstance that reduces the penalty, since it preceded the enactment of Section 26 of RA

⁶ Cited by Zoe Cavern, *Battered Woman Syndrome*, Australian Domestic and Family Violence Clearinghouse (2003).

⁷ G.R. No. 135981, January 15, 2004.

⁸ *Ibid.*

⁹ *Ibid.*

9262. However, the definition by the Supreme Court was not changed by the subsequent legislation, and will be the basis of future decisions until modified. Because of the ruling in *Genosa*, it would now be easier for judges to accept BWS as a defense.

There was no discussion on BWS during the Bicameral Conference or on the floor. Even Senate President Drilon, former Secretary of Justice and an expert in criminal law, saw no problem with having this justifying circumstance in a special law. Because of the lack of discussion of the interpretation of the BWS provision in the records, the task is now left solely to the Supreme Court. What is clear, however, is that the syndrome is the justifying circumstance.¹⁰

We can expect some problems with the interpretation of this definition in the future. Aside from the problems of lack of sensitivity of many judges and their strict interpretation of BWS, the phrase “scientifically-defined pattern of psychological and behavioural symptoms,” leaves out a wide range of psychological state of women who suffer abuse that may not be classified as BWS. The word "scientific" can result to a restrictive definition or coverage of abuses suffered by women. As cited by other authors on BWS, it also boxes women in the stereotype that woman are irrational and helpless. This will be an obstacle to women who appear to be rational and in control of themselves at the time of the trial. Lawyers and psychiatrists or psychologists may be tempted to make their clients fall under this stereotype in order to assure an acquittal. As a guideline, the general trend in the United States is to test scientific validity under two principles, to wit:

There are no universal standards employed by courts to determine whether the basis upon which the expert testimony is tendered is sufficiently reliable (read valid) to warrant inclusion at trial, but there are two general approaches. One commonly accepted standard used in the U.S. is the *Frye standard* (*Frye v. United States*, 1923), which requires that the **scientific validity of the evidence must be generally accepted by experts in the particular field of inquiry** (see Giannelli, 1983)...Some courts have held that **only the**

¹⁰ Rev. Pen. Code, art. 11(1).

technique or methodology employed by the expert, as opposed to the principle itself, must be "generally accepted within the scientific community" (*Dyas v. United States*, 1977).¹¹ (Emphasis supplied)

As early as 1984, BWS was first recognized as a justifying circumstance in the landmark American case of *State v. Kelly*,¹² which was decided by the New Jersey Supreme Court. The Court defined BWS as "a series of common characteristics that appear in women who are abused physically and psychologically over an extended period of time by the dominant male figure in their lives." The Court also recited the "symptoms" of the syndrome and the common personality traits of women afflicted by it, such as low self-esteem, traditional beliefs about the home, the family, and the female sex role, tremendous feelings of guilt that their marriages are failing, and the tendency to accept responsibility for the batterer's actions.

The opinion of an expert who can tell the judge whether or not the accused woman has BWS is indispensable to the courts before they could reach a decision. The *Kelly* opinion states that:

[T]he expert's testimony might also enable the jury to find that the battered wife, because of the prior beatings, numerous beatings, as often as once a week, for seven years, from the day they were married to the day he died, is particularly able to predict accurately the likely extent of violence in any attack on her. That conclusion could significantly affect the jury's evaluation of the reasonableness of defendant's fear for her life.¹³

Heavily cited in the case of *Kelly* was prominent psychologist Dr. Leonor E. Walker, known as the "mother" of BWS. She coined the term "battered woman syndrome" and laid out a lot of important principles of BWS. The first important concept is that it is a post-traumatic stress disorder (PTSD), and not

¹¹ Regina Schuller and Neil Vidmar, *Battered Woman Syndrome Evidence in the Courtroom: A Review of the Literature*, 16 LAW AND HUMAN BEHAVIOR 273 (1992).

¹² *State of New Jersey v. Gladys Kelly*, 97 N.J. 178 (1984)

¹³ *Id.*

a mental disorder.¹⁴ The second important theory is that BWS is a manifestation of learned helplessness. The “theory of learned helplessness” describes the battered woman’s perceptions that she is helpless to stop the abuse and explains why she does not leave her abuser.¹⁵ The third important concept is that a battering relationship undergoes a three-phase cycle. These phases are: (1) tension-building accompanied with rising sense of danger, (2) the acute battering incident, and (3) loving contrition.¹⁶ The understanding of this theory is crucial in the application of BWS as a legal defense. In the first phase, there is a gradual escalation of tension displayed by discreet acts causing increased friction such as name-calling, other mean intentional behaviors, and/or physical abuse. The batterer is hostile but not in an extreme manner, while the woman attempts to pacify the batterer.¹⁷ In the second phase, the tension continues to escalate until the woman is unable to control the batterer’s angry response pattern.¹⁸ This is when the actual physical abuse occurs. In the third phase, the batterer may apologize profusely, try to assist his victim, show kindness and remorse, and shower her with gifts and/or promises. Even the batterer is made to believe that he will never allow himself to be violent again.¹⁹ This is reminiscent of when the relationship was starting out, filled with hope and promises for the future, until a second round of the cycle commences again once the woman lets herself be vulnerable.

The definition of BWS is crucial to be re-defined by our judicial system in light of the enactment of RA 9262. No case has followed *Genosa* even if there are thousands of women like Shiela Macapugay who are suffering violence from their abusive husbands or partners. Some of them might end up killing their partners in retaliation, and hopefully a case will be elevated to the Philippine Supreme Court to further re-define and set some standards governing BWS’s definition.

¹⁴ LEONOR WALKER, *THE BATTERED WOMAN SYNDROME*, 41 (2005 ed.).

¹⁵ L. Walker, et al., *Beyond the Juror’s Ken: Battered Women*, 7 VT. L. REV. 1, 6 (1982). *Cited in Note, Developments – Domestic Violence*, 106 HARV. L. REV. 1498, 1579 (1993).

¹⁶ Walker, *supra* note 12 at 91.

¹⁷ *Id.*

¹⁸ *Id.* at 94.

¹⁹ *Id.*

C. Philippine Jurisprudence

The jurisprudential antecedence of BWS could be gleaned half-a-century before *People v. Genosa* and the enactment of RA 9262. In the case of *People v. Canja*,²⁰ a man who had a gambling, drinking and infidelity problem frequently beat up his lawful wife. One evening, while the man was sleeping, his wife killed him, and confessed the crime to her daughter. Her confession revealed that she was scared that if she did not kill her husband, he might kill her. The Court did not appreciate the defense of the wife, stating that the cruelty of the husband is not a justification to take away his life. However, in the separate opinion of Justice Marceliano Montemayor, he wrote that the woman deserves executive clemency based on this justification:

The violence with which the 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.”²¹ (Emphasis supplied)

This shows that as early as the 1950s, a Supreme Court Justice already had an opinion on the unfairness of the law in the treatment of women who commit crimes propelled by the pain of abusive domestic relationships. However, in the next fifty years, there is merely a line of Supreme Court cases wherein battered women are convicted of parricide in the event they retaliated against their abusers.²²

²⁰ 86 Phil. 522 (1950).

²¹ *Id.*

²² *People v. Samson*, G.R. No. 14110, 7 SCRA 478 (1963); *People v. Lorenzo*, G.R. No. 110107, 240 SCRA 624 (1995). Cited by Myrna Feliciano, *The Battered Woman/Child Syndrome*, a lecture delivered in the PWJA Convention, Manila Hotel on March 4, 2004.

A breakthrough came in the year 2000 in the case of *Marivic Genosa*,²³ where the Supreme Court acknowledged that it was necessary and indispensable for the court to find out about the state of mind of the accused woman at the time of the commission of the crime, and to ensure that a conviction is based on guilt beyond reasonable doubt. The Court, speaking through Justice Artemio Panganiban, was open to the fact that the “battered wife syndrome” is a viable plea under the traditional concept of self-defense. Hence, the case was remanded to the Regional Trial Court of Ormoc City for reception of the testimony of the psychiatrist, the late Dr. Alfredo Pajarillo, as an expert witness.

The testimony of an expert on BWS who will testify on the state of mind of the accused woman at the time of the commission of the crime is indispensable to her defense. While psychiatrists are generally considered as qualified to testify as expert witnesses, the courts can also accept the expert testimony of psychologists, especially if they are clinical psychologists and/or in the academe.

Four years after the *Genosa* case was remanded to the trial court, the Supreme Court was faced with the issue of BWS on appeal in 2004. This time, the Supreme Court defined a woman with Battered Wife Syndrome as one “**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**”. The trial court convicted Marivic Genosa for parricide. After remanding the case for the hearing of the expert’s testimony on BWS, the Supreme Court affirmed the conviction of Genosa for parricide but reduced her sentence from fourteen to six years after finding two mitigating circumstances. The Supreme Court applied Article 13, paragraph 9 of the Revised Penal Code on mitigating circumstances, that of “an illness which diminished the exercise of will-power of the offender without however depriving him of the consciousness of his acts.” Having served her sentence while the case was pending, Genosa was set free. Notably, former Chief Justice

²³ *Supra* note 8, Sept. 9, 2000 Resolution.

Hilario Davide, Jr. joined the dissent from the majority opinion in the *Genosa* ruling because he believed that Marivic Genosa should have been acquitted.

The reason why BWS was not fully appreciated in the case of *Genosa* was because the majority strictly adhered to the legal framework of self-defense and the need for “unlawful aggression.” There was a lack of appreciation of the theory of BWS as a separate defense all together because it was decided before RA 9262 took effect. That is why, ultimately, the majority simply decided on the reduction of Genosa’s penalty based on mitigating circumstances under Article 13, paragraph 9 of the Revised Penal Code, which refers to the physiological illness that is also mentally debilitating.²⁴ With due respect, although it benefited Genosa, this is an erroneous application of the law because BWS is not a mental illness. It is also not a defense of insanity,²⁵ which exempts the woman from criminal liability but will require her confinement in a mental institution. The woman can be aware of what she is doing when she executes the fatal act. It would be easier for judges to apply BWS if their understanding thereof is insanity, but it is not. BWS is widely recognized as Post Traumatic Stress Disorder (PTSD) or a sub-category of PTSD in the United States.

RA 9262 went further by providing that BWS is a justifying circumstance notwithstanding that any of the elements of self-defense²⁶ is lacking. The emphasis on “notwithstanding that any of the elements of self-defense is lacking” was added precisely to avoid its confusion with the rule on self-defense under the penal laws. Under RA 9262, BWS is not merely a mitigating circumstance under Article 13 of the Revised Penal Code that has the effect of reducing the penalty by one or two degrees lower.²⁷ BWS is a justifying circumstance that absolves the battered woman from criminal and civil liability.²⁸

²⁴ I LUIS REYES, *THE REVISED PENAL CODE CRIMINAL LAW* 320-322, (2008 ed.).

²⁵ REV. PEN. CODE, art. 12 (1).

²⁶ REV. PEN. CODE, art. 11 (1).

²⁷ See Rowena Guanzon, *Lucid Interval*, *Philippine Daily Inquirer*, January 31, 2004 for the history and rationale of the provision on BWS.

²⁸ Rep. Act No. 9262, §26 (2004).

III. THE CRITICAL ELEMENTS OF BWS

Why don't we just let the battered woman plead self-defense under the Revised Penal Code? Why provide for BWS as a justifying circumstance in RA 9262?

After weighing the options, the consultants, who helped draft the provisions on BWS in the substitute Senate Bill, proposed making BWS a justifying circumstance because they believed that it would be difficult for judges to understand the situation of a battered woman within the framework of self-defense. This is because in most cases, the element of unlawful aggression on the part of the deceased will be absent, such as when a woman executes the fatal act while the man or husband is asleep or drunk. The self-defense rule²⁹ of the Revised Penal Code was designed by male legislators with men in mind. They pictured a fight between men, both having the capacity to strike or defend themselves, or having equal force. Hence, in the self-defense rule, the element of use of reasonable means³⁰ to repel the attack must be present. Surely we cannot expect that as a reasonable requirement when a woman is being beaten up by her husband, because she cannot defend herself with equal force.³¹ The legislators did not have in mind a case where a woman, acting on a perceived serious threat to her life or her children or loved ones, strikes a fatal blow on the deceased. If you apply the self-defense rule in the battered woman's situation, she will not get acquitted. At most, she will benefit only from the mitigating circumstance of incomplete self-defense in Article 13(l) because one element of self-defense is lacking.

²⁹ *Supra* note 24.

³⁰ *US v. Molina*, 19 Phil 227 (1911); *People v. Sumicad*, 56 Phil. 657 (1932); *US v. Macasaet*, 35 Phil. 229 (1916); *People v. Montalbo*, 56 Phil. 443 (1931).

³¹ *US v. Apego*, 23 Phil. 391 (1912), a case that involved a woman who killed her assailant with a knife thinking he was going after her honor. This case would not have fallen under the defense provided in Rep. Act No. 9262, §26, the attacker being her brother-in-law, however, it shows that the majority was not sensitive to the incapacity of women to match the strength of force of men without the aid of a weapon. The dissenting opinions, however, found reason in the woman's acts and that she should have been acquitted. *See also* *People v. Jaurigue*, 76 Phil. 174 (1946). *Compared to* *People v. Boholst-Caballero*, 61 SCRA 180 (1973), where the woman was justified in grabbing her husband's knife from his belt when he was strangling her on the ground.

The rule on self-defense is male-gendered, and because of this gender bias, the woman with BWS may not get justice. Hence the consultants recommended to Senator Luisa Estrada, chair of the Committee on Family, that BWS should be a unique defense, a justifying circumstance.

In American jurisprudence, the critical elements of BWS, as compared to self-defense justifying circumstance, are as follows: (1) The “reasonable person” standard, (2) amount of force, and (3) imminent threat.³²

The first element of reasonableness is very crucial as the expert testimony must show “the reasonableness of a defendant’s belief that she was in imminent danger of death or serious injury.”³³ This element heavily relies on expert testimony. The expert has to determine whether the woman, at the time she performed the allegedly criminal acts, was in a state of mind wherein she could reasonably believe that if she remains passive, her life will be in peril. This reasonableness standard will help define the next two elements, because the woman must reasonably believe that the amount of force used was necessary to overcome the imminent threat. The amount of force is a notch more complicated than the amount of force element in the traditional self-defense under Article 12 of the Revised Penal Code. Often, experts testify that a battered woman may believe from the cycles of battery that her husband is capable of killing her without a weapon,³⁴ thereby justifying her use of a weapon to quell the imminent danger. It is also complicated by the fact that women are generally smaller in stature than men that they believe they need to use a lethal weapon, such as a gun or a knife, to defend themselves against their batterer.³⁵ Under the rule of self-defense, it will be seen that the use of such weapons might be extreme if *only* the immediate circumstances are considered.

³² *Battered Women Who Kill Their Abusers*, 106 HARV. L. REV. 1574, 1580-1583 (1993).

³³ *Id.*

³⁴ *Id.*, at 1582 *citing* People v. Reeves, 362 N.E.2d 9, 14 (Ill. App. Ct. 1977).

³⁵ Elizabeth Schneider & Susan Jordan, *Representation of Women Who Defend Themselves in Response to Physical or Sexual Assault*, 4 NAT’L J. CRIM. DEF. 141, 167 (1978).

Note that “imminent” is different in BWS cases, wherein it is possible due to the history of abusive or violent acts by the batterer that the woman merely *expects* an attack that will put her life or those of her loved ones in peril. When a woman has BWS, the “reasonableness” of her act should be viewed within the context of the history of abuse, and her mental state at the time of the commission of the crime, which explains the seriousness of her perceived threat to her life. From her history of abuse, the judge and prosecutor can appreciate the woman's perception of the threat to her or her loved one's life as serious, imminent, continuing, and that there is no other way for her to survive but to strike back under the circumstances which secures her safety - e.g. hitting the batterer with a lead pipe while he is asleep due to intoxication.

Let us take a look back at the elements of self-defense under the Revised Penal Code. There are three elements of self-defense, under Article 11 of the Revised Penal Code: (1) unlawful aggression, (2) reasonable necessity of the means employed to repel or prevent the attack, and (3) no provocation on the part of the accused. To compare, Section 26 of RA 9262 states that a woman who is suffering from BWS at the time of the commission of the crime shall incur no civil or criminal liability even if any of the elements of self-defense is lacking. Since RA 9262 is a special law, if the accused woman is proven to have BWS, Section 26 of RA 9262 applies and not the self-defense rule in the Revised Penal Code.

Under the Revised Penal Code, when any of the elements of self-defense is lacking, what can also be applied is Article 13 (1) of the Revised Penal Code called “incomplete self-defense,” which mitigates the penalty or reduces it to one or two degrees. Say for example, there was some provocation on the part of the deceased, wherein he slammed his wife against the wall, prompting the wife to stab him with a knife. In incomplete self-defense, the woman will be convicted with the mitigating circumstance of incomplete self-defense (the element of reasonable necessity of means lacking), while under Sec. 26 of RA 9262, the woman will be acquitted if it is shown that she suffered from BWS.

To reiterate, in BWS, the syndrome is the justifying circumstance. The woman's act should not be judged under the rule on self-defense. Neither should BWS be viewed as insanity, which is an exempting circumstance under the Revised Penal Code.³⁶ True, BWS is vulnerable to the criticism that it is an "abuse excuse." Joshua Dessler, made a critique on the BWS as a justifying circumstance, wherein he believed that it should *not* be treated as a justifying circumstance, especially in instances where the woman kills her abuser when the abuser is passive or vulnerable (like when he is sleeping or drunk).³⁷ His main thesis is that while the battered woman syndrome looks into the actor, the wife, justifying circumstances do not. According to him, BWS, the way it has been used as a defense, very closely resembles the plea of temporary insanity.³⁸ The author therefore suggests:

We do not need to focus on syndromes, however, to provide a potential excuse for severely battered women. We can provide a theory for acquittal that is, I think, more consistent with our moral intuitions, and which is not potentially demeaning to the woman. The solution is found in applying the no-fair opportunity prong of excuse theory. A no-fair-opportunity excuse claim is based on some external factor that acts on the individual in a way that convinces us that she did not have a fair opportunity to conform her conduct to the law. The key word here, of course, is fair. This is a normative judgment. We do not need expert psychiatric testimony to handle this question, because this form of excuse recognizes that there is nothing wrong with the woman—what was “wrong” were external circumstances that we believe, but for the grace of God, would probably have caused us, as well, to act unlawfully.³⁹

Dessler therefore agrees with the result of acquittal for battered women, but is merely against the legal framework as it is implemented now in several jurisdictions. In essence, his thesis is to simplify the procedure by doing away with the expert requirement in determining the fairness of the attack.

³⁶ REV. PEN. CODE, art. 12 (1).

³⁷ Joshua Dessler, *Battered Women and Sleeping Abusers: Some Reflections*, 3 OHIO ST. J. CRIM. L. 457 (2006).

³⁸ *Id.* at 462, 468.

³⁹ *Id.* at 469.

This way, it is clearer to judges that it is not because the woman was crazy, but it was the rational action for the woman to kill her husband for her to be able to quell the abuse.

Another point of comparison of BWS is Article 247 of the Revised Penal Code,⁴⁰ which punishes a married person only with *destierro* or banishment or exile when he or she kills his or her spouse or paramour after catching them in the act or in *flagrante delicto*. Even though the provision seems gender-neutral, referring to “any legally married person,” the Supreme Court has only decided cases under this provision by favouring men.⁴¹ If this can be easily understood by judges and by society as a reasonable act of a dishonoured man, why can’t women with BWS be viewed likewise as being justified for killing or injuring their husbands or partners after years of cumulative abuse? Nonetheless, the current rule on death under exculpating circumstances is starkly different from BWS, because in BWS, the woman does not need to catch her husband in the act of infidelity or any other triggering circumstance. It is the continuing abuse that allows her to be free of criminal liability in the event that she kills or injures her abuser, and not the heat of the passion.

Why did the legislators write BWS as justifying circumstance and did not instead merely define it and allow the courts to apply the present law on self-defense? Why not just use insanity as an exempting circumstance⁴² or the provision on exempting any person who acts under the impulse of an uncontrollable fear of an equal or greater injury?⁴³ In the United States, before several BWS statutes were legislated, the usual plea is for insanity or impaired mental capacity or crime committed at the heat of passion to reduce the penalty to manslaughter.⁴⁴ This has been severely criticized because of the

⁴⁰ Also applies to parents and the seducers of their minor children. If mere physical injuries are inflicted, the perpetrator is acquitted. *See* People v. Araquel, G.R. No. L-12629 (1959).

⁴¹ People v. Coricor, 79 Phil. 672 (1947); People v. Magonawal, G.R. No. L-35783 (1975); People v. Abarca, G.R. No. 74433 (1987).

⁴² REV. PEN. CODE, art. 12 (1).

⁴³ REV. PEN. CODE, art. 13 (6).

⁴⁴ 34 Am. Jur. Proof of Facts 2d 1, §3 (1983). *Citing* Elizabeth Schneider, *Equal Rights to Trial for Women: Sex Bias in the Law of Self Defense*, 15 HARV. C.R.-C.L. L. REV. NO. 3, 623 (1980).

inherent sexual bias of thinking that a woman is only killing her husband because she is insane, and on top of that, this will only lead to her confinement in a mental institution.⁴⁵ It is because these defenses do not capture or cover the nuances and reality of battered women, and because of this they might not be accorded justice. Furthermore, these defenses are also mostly likely going to be applied by judges using a male-gendered view, or they might judge a woman's behaviour using a male standard.

Judges are appointed through a political process and not because of their qualifications for gender sensitivity.⁴⁶ Gender sensitivity is not one of the requirements for an applicant for judgeship. Using primarily a male perspective, it is easy to convict a battered woman, who kills her lover or husband while he is asleep, with murder. Without seeing the context of the unlawful act and of the history of abuse, it is easy for prosecutors and judges to interpret the woman's act of hitting the husband or lover on the head while he is asleep or unaware as treachery and convict the woman of parricide or murder. They may be unable to understand the woman's perceived threat to her life as continuing and imminent even when her abuser is asleep at the time of the commission of the act. The "intent to kill" may also be a problem for defenders of women with BWS, such as in the case of Shiela Macapugay who planned the killing when she hid the gun in her purse, and judges might see this element as far outweighing the mental state of the woman.

As confirmed by Harvard Law School and New York University Law Professor Elizabeth Schneider:

Although the law on self defense is purportedly universally applicable, it is widely recognized that social concepts of justification have been shaped by male experience. Familiar images of self-defense are a soldier, a man protecting his home, his family, or the chastity of his wife; or a man fighting off his assailant. Yet the circumstances in which women kill in self-defense are usually related to physical or sexual abuse by an intimate, not to the conventional

⁴⁵ *Id.*

⁴⁶ Mary Becker, *Access to Justice for Battered Women*, 12 JOURNAL OF LAW & POLICY 63 (2003).

barroom brawl or fistfight with a stranger that shapes male experience with self defense.⁴⁷

Still, Schneider does caution against the use of BWS as a special defense.

As Schneider also notes, that because of gender bias, the acts of men and women are subject to legal expectations and standards. A man who kills his wife or her paramour after catching her in the act with her lover is viewed sympathetically in Philippine society. His motivation is well understood by the courts especially that more than a majority of our judges are men. Article 247 of the Revised Penal Code⁴⁸ was designed to acquit men who in the eyes of lawmakers and society, are justified in killing their wives in defense of their (male) honor. In contrast, the courts have never acquitted a wife who killed her husband after finding him with another woman, nor has the law, prior to BWS, given reprieve to a woman who kills her batterer in retaliation for repeated, cumulative abuse due to her fear of imminent danger to her or her child's life.

⁴⁷ ELIZABETH SCHNEIDER, *BATTERED WOMEN AND FEMINIST LAWMAKING*, Yale University Press (2000).

⁴⁸ Art. 247. *Death or physical injuries inflicted under exceptional circumstances.* — Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

Battered women defendants face major obstacles in pleading traditional self-defense, especially on (1) the temporal proximity of the danger perceived by the defendant; (2) the requirement of reasonableness of the means or force employed, and (3) the duty to retreat, the latter being used in the United States but not in our jurisdiction.

The traditional self-defense requirements of reasonableness, imminent danger, and equal force are sex-biased -- a woman who kills her husband who is a batterer is viewed as inherently unreasonable or irrational because she is going against the norm of what is appropriate behaviour for a woman. She must explain why she didn't leave him, why she did not call the police, and so on and so forth. For this reason, the history of abuse and previous calls for help by the woman should be proven in court in order for the judge to understand the woman's difficult situation, and why she killed or injured her husband. The limitations of the Revised Penal Code are too burdensome for the woman who is suffering from BWS, and who, like any human being, merely wants to preserve her life and dignity.

Aside from proving BWS, it is indispensable that the following evidence, among others, must be offered: (1) history of the abuse, (2) economic and social situation of the woman, (3) the number and age of her children who are in her care or inside the home, (4) the lack of access of the woman to support services, (5) that she called for help in previous occasions, (6) what the neighbors or other family members inside the home saw or heard, and (7) conduct and mental state of the accused woman immediately after the act. *Barangay*⁴⁹ officials must keep records of prior calls for help or of *Barangay* Protection Orders⁵⁰ issued against the husband or partner.

These evidence therefore require that as professionals who are supporting battered women, the counsellors, psychologists and psychiatrists must also study the law and its application, write down notes of interviews of the woman and other informants, keep the records well, and establish a

⁴⁹ Elected Village Officials

⁵⁰ A *Barangay* Protection Order (BPO) is issued by elected *barangay* officials without a hearing, within 24 hours from the report of abuse.

credible reputation in the community or in the country to be able to put forward their expertise and testimony with success in court.

The above evidence are necessary so that the judge can appreciate the **context and reasonableness** of the woman's act, what drove her to do such a thing, and why she perceived the threat to her life as present or continuing. Also, it is important for judges to appreciate that the situation of every battered woman is different from another,⁵¹ although they will have many things in common. This will prevent stereotyping of women's actions or reactions to the perceived continuing aggression.

Reasonableness is the area in which the social context of battering must be understood by lawyers, prosecutors and judges. Evidence of battering and the woman's BWS will give the judge the **appropriate context** in which to decide whether the woman's apprehension of imminent danger of death or great bodily harm was reasonable. It is a justifying circumstance of a different tenor, because it looks back to the totality of the experience of the woman with her abuser that led to the killing, rather than merely assessing the killing during the actual killing itself.

IV. RECOMMENDATIONS

A. Guidelines for Lawyers with Cases Involving BWS

As Elizabeth Schneider wrote, "In order for a defense lawyer to believe that a battered woman has a credible claim of self-defense, the lawyer will first have to overcome sex-based stereotypes of reasonableness, understand enough about the experiences of battered women to be able to consider whether the woman's actions are reasonable, and in a manner

⁵¹ *Supra* note 38 at 75.

sensitive to the problems of gender-bias, be able to listen to the woman's experiences."⁵²

The **framework of gender bias** is useful as a mode of case analysis that must be carefully applied to the facts of each individual case. Lawyers must also understand and appreciate **the framework of inequality that shapes these cases** because, as Schneider wrote, "the law has been developed with a male norm in mind, and because stereotypes about women, and about battered women in particular, persist in the minds of judges, juries, and lawyers themselves, lawyers need to be critical about their own assumptions, to seek assistance from experts in the field, and to be able to recognize and point out gender bias in the law where it occurs."⁵³

Prosecutors and judges should do the same. They must be aware of the myths and misconceptions about battering that may impede fair trials. Aside from psychiatrists and psychologists, researchers and counselors can aid the courts in appreciating the woman's experience of battering, the history of abuse, and the situation that women face in abusive relationships.

The defense lawyer should prove the following: (1) history of violence against the battered woman, (2) her efforts to protect herself in the past and the obstacles to these efforts, (3) the social and psychological impact of violence on her, and (4) the context in which the violence occurred.⁵⁴

V. CONCLUSION

⁵² *Supra* note 40.

⁵³ *Id.*

⁵⁴ Mary Ann Dutton, *Validity of "Battered Woman Syndrome" in Criminal Cases Involving Battered Women*, (Malcolm Gordon ed. 1994); Dutton, M.A., *Understanding women's responses to domestic violence: A redefinition of battered woman syndrome*. 21 HOFSTRA L. REV. 1191 (1993); L.E. Walker, *Battered woman syndrome and self-defense*, 6 NOTRE DAME J.L. ETHICS & PUB. POL'Y 321 (1992); Julie Blackman, *Potential uses for expert testimony: Ideas toward the representation of battered women who kill*, 9 Women's Rts. L. Rep. 227 (1986).

As a defense, BWS is not without its share of criticism. Some say that it can be an excuse for murder. Schneider states in her treatise that “the presentation of testimony on battered woman syndrome plays into the patriarchal attitudes that courts have exhibited toward women and women defendants.”⁵⁵ Women will often be pictured as helpless, irrational, and not in her right mind in order to win a case, and many lawyers will be taking that track to ensure a victory. Psychiatrists who are eager or willing to help may bend over backwards to testify in favor of the woman. These problems will continue to challenge all of us because this will simply tolerate existing stereotypes instead of enlightening the courts of the leeway carved by the law especially for these women.

Aside from that, the following are some issues and problems on BWS as a legal defense: (a) the problem of “intent to kill” versus perceived threat to the woman’s life or the life of her loved ones, (b) male-gendered view or double standard of reasonableness, (c) competence and ethical problems for psychiatrists and psychologists, (d) testimony of expert witnesses are not conclusive, the judges may choose to believe them or not, (e) unevenness of the application of the defense to poor and rich women, because the latter can afford to hire the best expert witnesses and because of class can be viewed more sympathetically by the judges, and (f) stereotyping of battered women.

Some questions also include “is BWS as a justifying circumstance a step forward or backward for women?” And “have we diminished women's role in the development of legal theory by claiming a new defense in RA 9262?”

Nevertheless, even with these issues and problems, RA 9262 still provides a viable defense for women with BWS. BWS also has probative value in custody cases, wherein the batterer will be disqualified from having custody of the children. It can also surely stand the criticism that it violates the equal protection clause, for the Supreme Court in *Genosa* has emphatically defined “battered wife syndrome.” With this categorical definition in place, we can be

⁵⁵ *Supra* note 41.

optimistic that the law and BWS as a defense can work for battered women, but if and only if the Judiciary will be true to its gender-sensitive policy.

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