

EN BANC

[G.R. No. 135981. January 15, 2004]

PEOPLE OF THE PHILIPPINES, *appellee*, vs. MARIVIC GENOSA, *appellant*.

DECISION

PANGANIBAN, J.:

Admitting she killed her husband, appellant anchors her prayer for acquittal on a novel theory -- the battered woman syndrome (BWS), which allegedly constitutes self-defense. Under the proven facts, however, she is not entitled to complete exoneration because there was no unlawful aggression -- no immediate and unexpected attack on her by her batterer-husband at the time she shot him.

Absent unlawful aggression, there can be no self-defense, complete or incomplete.

But all is not lost. The severe beatings repeatedly inflicted on appellant constituted a form of cumulative provocation that broke down her psychological resistance and self-control. This psychological paralysis she suffered diminished her will power, thereby entitling her to the mitigating factor under paragraphs 9 and 10 of Article 13 of the Revised Penal Code.

In addition, appellant should also be credited with the extenuating circumstance of having acted upon an impulse so powerful as to have naturally produced passion and obfuscation. The acute battering she suffered that fatal night in the hands of her batterer-spouse, in spite of the fact that she was eight months pregnant with their child, overwhelmed her and put her in the aforesaid emotional and mental state, which overcame her reason and impelled her to vindicate her life and her unborn child.

Considering the presence of these two mitigating circumstances arising from BWS, as well as the benefits of the Indeterminate Sentence Law, she may now apply for and be released from custody on parole, because she has already served the minimum period of her penalty while under detention during the pendency of this case.

The Case

For automatic review before this Court is the September 25, 1998 Decision ^[1] of the Regional Trial Court (RTC) of Ormoc City (Branch 35) in Criminal Case No. 5016-0, finding Marivic Genosa guilty beyond reasonable doubt of parricide. The decretal portion of the Decision reads:

WHEREFORE, after all the foregoing being duly considered, the Court finds the accused, Marivic Genosa y Isidro, GUILTY beyond reasonable doubt of the crime of Parricide as provided under Article 246 of the

Revised Penal Code as restored by Sec. 5, RA No. 7659, and after finding treachery as a generic aggravating circumstance and none of mitigating circumstance, hereby sentences the accused with the penalty of DEATH.

The Court likewise penalizes the accused to pay the heirs of the deceased the sum of fifty thousand pesos (₱50,000.00), Philippine currency as indemnity and another sum of fifty thousand pesos (₱50,000.00), Philippine currency as moral damages.^[2]

The Information^[3] charged appellant with parricide as follows:

That on or about the 15th day of November 1995, at Barangay Bilwang, Municipality of Isabel, Province of Leyte, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery and evident premeditation, did then and there wilfully, unlawfully and feloniously attack, assault, hit and wound one BEN GENOSA, her legitimate husband, with the use of a hard deadly weapon, which the accused had provided herself for the purpose, [causing] the following wounds, to wit:

Cadaveric spasm.

Body on the 2nd stage of decomposition.

Face, black, blownup & swollen w/ evident post-mortem lividity. Eyes protruding from its sockets and tongue slightly protrudes out of the mouth.

Fracture, open, depressed, circular located at the occipital bone of the head, resulting [in] laceration of the brain, spontaneous rupture of the blood vessels on the posterior surface of the brain, laceration of the dura and meningeal vessels producing severe intracranial hemorrhage.

Blisters at both extrem[ities], anterior chest, posterior chest, trunk w/ shedding of the epidermis.

Abdomen distended w/ gas. Trunk bloated.

which caused his death.^[4]

With the assistance of her counsel,^[5] appellant pleaded not guilty during her arraignment on March 3, 1997.^[6] In due course, she was tried for and convicted of parricide.

The Facts

Version of the Prosecution

The Office of the Solicitor General (OSG) summarizes the prosecutions version of the facts in this wise:

Appellant and Ben Genosa were united in marriage on November 19, 1983 in Ormoc City. Thereafter, they lived with the parents of Ben in their house at Isabel, Leyte. For a time, Bens younger brother, Alex, and his wife lived with them too. Sometime in 1995, however, appellant and Ben rented from Steban Matiga a house at Barangay Bilwang, Isabel, Leyte where they lived with their two children, namely: John Marben and Earl Pierre.

On November 15, 1995, Ben and Arturo Basobas went to a cockfight after receiving their salary. They each had two (2) bottles of beer before heading home. Arturo would pass Bens house before reaching his. When they arrived at the house of Ben, he found out that appellant had gone to Isabel, Leyte to look for him. Ben went inside his house, while Arturo went to a store across it, waiting until 9:00 in the evening for the *masiao* runner to place a bet. Arturo did not see appellant arrive but on his way home passing the side of the Genosas rented house, he heard her say I wont hesitate to kill you to which Ben replied Why kill me when I am innocent? That was the last time Arturo saw Ben alive. Arturo also noticed that since then, the Genosas rented house appeared uninhabited and was always closed.

On November 16, 1995, appellant asked Erlinda Paderog, her close friend and neighbor living about fifty (50) meters from her house, to look after her pig because she was going to Cebu for a pregnancy check-up. Appellant likewise asked Erlinda to sell her motorcycle to their neighbor Ronnie Dayandayan who unfortunately had no money to buy it.

That same day, about 12:15 in the afternoon, Joseph Valida was waiting for a bus going to Ormoc when he saw appellant going out of their house with her two kids in tow, each one carrying a bag, locking the gate and taking her children to the waiting area where he was. Joseph lived about fifty (50) meters behind the Genosas rented house. Joseph, appellant and her children rode the same bus to Ormoc. They had no conversation as Joseph noticed that appellant did not want to talk to him.

On November 18, 1995, the neighbors of Steban Matiga told him about the foul odor emanating from his house being rented by Ben and appellant. Steban went there to find out the cause of the stench but the house was locked from the inside. Since he did not have a duplicate key with him, Steban destroyed the gate padlock with a borrowed steel saw. He was able to get inside through the kitchen door but only after destroying a window to reach a hook that locked it. Alone, Steban went inside the unlocked bedroom where the offensive smell was coming from. There, he saw the lifeless body of Ben lying on his side on the bed covered with a blanket. He was only in his briefs with injuries at the back of his head. Seeing this, Steban went out of the house and sent word to the mother of Ben about his sons misfortune. Later that day, Iluminada Genosa, the mother of Ben, identified the dead body as that of [her] son.

Meanwhile, in the morning of the same day, SPO3 Leo Acodesin, then assigned at the police station at Isabel, Leyte, received a report regarding the foul smell at the Genosas rented house. Together with SPO1 Millares, SPO1 Colon, and Dr. Refelina Cerillo, SPO3 Acodesin proceeded to the house and went inside the bedroom where they found the dead body of Ben lying on his side wrapped with a bedsheet. There was blood at the nape of Ben who only had his briefs on. SPO3 Acodesin found in one corner at the side of an *aparador* a metal pipe about two (2) meters from where Ben was, leaning against a wall. The metal pipe measured three (3) feet and six (6) inches long with a diameter of one and half (1 1/2) inches. It had an open end without a stop valve with a red stain at one end. The bedroom was not in disarray.

About 10:00 that same morning, the cadaver of Ben, because of its stench, had to be taken outside at the back of the house before the postmortem examination was conducted by Dr. Cerillo in the presence of the police. A municipal health officer at Isabel, Leyte responsible for medico-legal cases, Dr. Cerillo found that Ben had

been dead for two to three days and his body was already decomposing. The postmortem examination of Dr. Cerillo yielded the findings quoted in the Information for parricide later filed against appellant. She concluded that the cause of Bens death was cardiopulmonary arrest secondary to severe intracranial hemorrhage due to a depressed fracture of the occipital [bone].

Appellant admitted killing Ben. She testified that going home after work on November 15, 1995, she got worried that her husband who was not home yet might have gone gambling since it was a payday. With her cousin Ecel Arao, appellant went to look for Ben at the marketplace and taverns at Isabel, Leyte but did not find him there. They found Ben drunk upon their return at the Genosas house. Ecel went home despite appellants request for her to sleep in their house.

Then, Ben purportedly nagged appellant for following him, even challenging her to a fight. She allegedly ignored him and instead attended to their children who were doing their homework. Apparently disappointed with her reaction, Ben switched off the light and, with the use of a chopping knife, cut the television antenna or wire to keep her from watching television. According to appellant, Ben was about to attack her so she ran to the bedroom, but he got hold of her hands and whirled her around. She fell on the side of the bed and screamed for help. Ben left. At this point, appellant packed *his* clothes because she wanted him to leave. Seeing his packed clothes upon his return home, Ben allegedly flew into a rage, dragged appellant outside of the bedroom towards a drawer holding her by the neck, and told her You might as well be killed so nobody would nag me. Appellant testified that she was aware that there was a gun inside the drawer but since Ben did not have the key to it, he got a three-inch long blade cutter from his wallet. She however, smashed the arm of Ben with a pipe, causing him to drop the blade and his wallet. Appellant then smashed Ben at his nape with the pipe as he was about to pick up the blade and his wallet. She thereafter ran inside the bedroom.

Appellant, however, insisted that she ended the life of her husband by shooting him. She supposedly distorted the drawer where the gun was and shot Ben. He did not die on the spot, though, but in the bedroom. ^[7]
(Citations omitted)

Version of the Defense

Appellant relates her version of the facts in this manner:

1. Marivic and Ben Genosa were allegedly married on November 19, 1983. Prior to her marriage, Marivic had graduated from San Carlos, Cebu City, obtaining a degree of Bachelor of Science in Business Administration, and was working, at the time of her husbands death, as a Secretary to the Port Managers in Ormoc City. The couple had three (3) children: John Marben, Earl Pierre and Marie Bianca.

2. Marivic and Ben had known each other since elementary school; they were neighbors in Bilwang; they were classmates; and they were third degree cousins. Both sets of parents were against their relationship, but Ben was persistent and tried to stop other suitors from courting her. Their closeness developed as he was her constant partner at fiestas.

3. After their marriage, they lived first in the home of Bens parents, together with Bens brother, Alex, in Isabel, Leyte. In the first year of marriage, Marivic and Ben lived happily. But apparently, soon thereafter, the couple would quarrel often and their fights would become violent.

4. Bens brother, Alex, testified for the prosecution that he could not remember when Ben and Marivic married. He said that when Ben and Marivic quarreled, generally when Ben would come home drunk, Marivic would inflict injuries on him. He said that in one incident in 1993 he saw Marivic holding a kitchen knife after Ben had shouted for help as his left hand was covered with blood. Marivic left the house but after a week, she returned apparently having asked for Bens forgiveness. In another incident in May 22, 1994, early morning, Alex and his father apparently rushed to Bens aid again and saw blood from Bens forehead and Marivic holding an empty bottle. Ben and Marivic reconciled after Marivic had apparently again asked for Bens forgiveness.

Mrs. Iluminada Genosa, Marivics mother-in-law, testified too, saying that Ben and Marivic married in 1986 or 1985 more or less here in Fatima, Ormoc City. She said as the marriage went along, Marivic became already very demanding. Mrs. Iluminada Genosa said that after the birth of Marivics two sons, there were three (3) misunderstandings. The first was when Marivic stabbed Ben with a table knife through his left arm; the second incident was on November 15, 1994, when Marivic struck Ben on the forehead using a sharp instrument until the eye was also affected. It was wounded and also the ear and her husband went to Ben to help; and the third incident was in 1995 when the couple had already transferred to the house in Bilwang and she saw that Bens hand was plastered as the bone cracked.

Both mother and son claimed they brought Ben to a Pasar clinic for medical intervention.

5. Arturo Basobas, a co-worker of Ben, testified that on November 15, 1995 After we collected our salary, we went to the cock-fighting place of ISCO. They stayed there for three (3) hours, after which they went to Uniloks and drank beer allegedly only two (2) bottles each. After drinking they bought barbeque and went to the Genosa residence. Marivic was not there. He stayed a while talking with Ben, after which he went across the road to wait for the runner and the usher of the masiao game because during that time, the hearing on masiao numbers was rampant. I was waiting for the ushers and runners so that I can place my bet. On his way home at about 9:00 in the evening, he heard the Genosas arguing. They were quarreling loudly. Outside their house was one Fredo who is used by Ben to feed his fighting cocks. Basobas testimony on the root of the quarrel, conveniently overheard by him was Marivic saying I will never hesitate to kill you, whilst Ben replied Why kill me when I am innocent. Basobas thought they were joking.

He did not hear them quarreling while he was across the road from the Genosa residence. Basobas admitted that he and Ben were always at the cockpits every Saturday and Sunday. He claims that he once told Ben before when he was stricken with a bottle by Marivic Genosa that he should leave her and that Ben would always take her back after she would leave him so many times.

Basobas could not remember when Marivic had hit Ben, but it was a long time that they had been quarreling. He said Ben even had a wound on the right forehead. He had known the couple for only one (1) year.

6. Marivic testified that after the first year of marriage, Ben became cruel to her and was a habitual drinker. She said he provoked her, he would slap her, sometimes he would pin her down on the bed, and sometimes beat her.

These incidents happened several times and she would often run home to her parents, but Ben would follow her and seek her out, promising to change and would ask for her forgiveness. She said after she would be beaten, she would seek medical help from Dr. Dino Caing, Dr. Lucero and Dra. Cerillo. These doctors would enter the injuries inflicted upon her by Ben into their reports. Marivic said Ben would beat her or quarrel with her every time he was drunk, at least three times a week.

7. In her defense, witnesses who were not so closely related to Marivic, testified as to the abuse and violence she received at the hands of Ben.

7.1. Mr. Joe Barrientos, a fisherman, who was a [neighbor] of the Genosas, testified that on November 15, 1995, he overheard a quarrel between Ben and Marivic. Marivic was shouting for help and through the open jalousies, he saw the spouses grappling with each other. Ben had Marivic in a choke hold. He did not do anything, but had come voluntarily to testify. *(Please note this was the same night as that testified to by Arturo Busabos. [8])*

7.2. Mr. Junnie Barrientos, also a fisherman, and the brother of Mr. Joe Barrientos, testified that he heard his neighbor Marivic shouting on the night of November 15, 1995. He peeped through the window of his hut which is located beside the Genosa house and saw the spouses grappling with each other then Ben Genosa was holding with his both hands the neck of the accused, Marivic Genosa. He said after a while, Marivic was able to extricate he[r]self and enter the room of the children. After that, he went back to work as he was to go fishing that evening. He returned at 8:00 the next morning. *(Again, please note that this was the same night as that testified to by Arturo Basobas).*

7.3. Mr. Teodoro Sarabia was a former neighbor of the Genosas while they were living in Isabel, Leyte. His house was located about fifty (50) meters from theirs. Marivic is his niece and he knew them to be living together for 13 or 14 years. He said the couple was always quarreling. Marivic confided in him that Ben would pawn items and then would use the money to gamble. One time, he went to their house and they were quarreling. Ben was so angry, but would be pacified if somebody would come. He testified that while Ben was alive he used to gamble and when he became drunk, he would go to our house and he will say, Teody because that was what he used to call me, mokimas ta, which means lets go and look for a whore. Mr. Sarabia further testified that Ben would box his wife and I would see bruises and one time she ran to me, I noticed a wound (the witness pointed to his right breast) as according to her a knife was stricken to her. Mr. Sarabia also said that once he saw Ben had been injured too. He said he voluntarily testified only that morning.

7.4. Miss Ecel Arano, an 18-year old student, who is a cousin of Marivic, testified that in the afternoon of November 15, 1995, Marivic went to her house and asked her help to look for Ben. They searched in the market place, several taverns and some other places, but could not find him. She accompanied Marivic home. Marivic wanted her to sleep with her in the Genosa house because she might be battered by her husband. When they got to the Genosa house at about 7:00 in the evening, Miss Arano said that her husband was already there and was drunk. Miss Arano knew he was drunk because of his staggering walking and I can also detect his face. Marivic entered the house and she heard them quarrel noisily. *(Again, please note that this is the same night as that testified to by Arturo Basobas)* Miss Arano testified that this was not the first time Marivic had asked her to sleep in the house as Marivic would be afraid every time her husband would come home drunk. At one time when she did sleep over, she was awakened at 10:00 in the evening when Ben arrived because the couple were very noisy in the sala and I had heard something was broken like a vase. She said Marivic ran into her room and they locked the door. When Ben couldnt get in he got a chair and a knife and showed us the knife through the window grill and he scared us. She said that Marivic shouted for help, but no one came. On cross-examination, she said that when she left Marivics house on November 15, 1995, the couple were still quarreling.

7.5. Dr. Dino Caing, a physician testified that he and Marivic were co-employees at PHILPHOS, Isabel, Leyte. Marivic was his patient many times and had also received treatment from other doctors. Dr. Caing testified that from July 6, 1989 until November 9, 1995, there were six (6) episodes of physical injuries

inflicted upon Marivic. These injuries were reported in his Out-Patient Chart at the PHILPHOS Hospital. The prosecution admitted the qualifications of Dr. Caing and considered him an expert witness.

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Dr. Caings clinical history of the tension headache and hypertention of Marivic on twenty-three (23) separate occasions was marked at Exhibits 2 and 2-B. The OPD Chart of Marivic at the Philphos Clinic which reflected all the consultations made by Marivic and the six (6) incidents of physical injuries reported was marked as Exhibit 3.

On cross-examination, Dr. Caing said that he is not a psychiatrist, he could not say whether the injuries were directly related to the crime committed. He said it is only a psychiatrist who is qualified to examine the psychological make-up of the patient, whether she is capable of committing a crime or not.

7.6 Mr. Panfilo Tero, the barangay captain in the place where the Genosas resided, testified that about two (2) months before Ben died, Marivic went to his office past 8:00 in the evening. She sought his help to settle or confront the Genosa couple who were experiencing family troubles. He told Marivic to return in the morning, but he did not hear from her again and assumed that they might have settled with each other or they might have forgiven with each other.

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Marivic said she did not provoke her husband when she got home that night it was her husband who began the provocation. Marivic said she was frightened that her husband would hurt her and she wanted to make sure she would deliver her baby safely. In fact, Marivic had to be admitted later at the Rizal Medical Centre as she was suffering from eclampsia and hypertension, and the baby was born prematurely on December 1, 1995.

Marivic testified that during her marriage she had tried to leave her husband at least five (5) times, but that Ben would always follow her and they would reconcile. Marivic said that the reason why Ben was violent and abusive towards her that night was because he was crazy about his recent girlfriend, Lulu x x x Rubillos.

On cross-examination, Marivic insisted she shot Ben with a gun; she said that he died in the bedroom; that their quarrels could be heard by anyone passing their house; that Basobas lied in his testimony; that she left for Manila the next day, November 16, 1995; that she did not bother anyone in Manila, rented herself a room, and got herself a job as a field researcher under the alias Marvelous Isidro; she did not tell anyone that she was leaving Leyte, she just wanted to have a safe delivery of her baby; and that she was arrested in San Pablo, Laguna.

Answering questions from the Court, Marivic said that she threw the gun away; that she did not know what happened to the pipe she used to smash him once; that she was wounded by Ben on her wrist with the bolo; and that two (2) hours after she was whirled by Ben, he kicked her ass and dragged her towards the drawer when he saw that she had packed his things.

9. The body of Ben Genosa was found on November 18, 1995 after an investigation was made of the foul odor emitting from the Genosa residence. This fact was testified to by all the prosecution witnesses and some defense witnesses during the trial.

10. Dra. Refelina Y. Cerillo, a physician, was the Municipal Health Officer of Isabel, Leyte at the time of the incident, and among her responsibilities as such was to take charge of all medico-legal cases, such as the examination of cadavers and the autopsy of cadavers. Dra. Cerillo is not a forensic pathologist. She merely took the medical board exams and passed in 1986. She was called by the police to go to the Genosa residence and when she got there, she saw some police officer and neighbor around. She saw Ben Genosa, covered by a blanket, lying in a semi-prone position with his back to the door. He was wearing only a brief.

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Dra. Cerillo said that there is only one injury and that is the injury involving the skeletal area of the head which she described as a fracture. And that based on her examination, Ben had been dead 2 or 3 days. Dra. Cerillo did not testify as to what caused his death.

Dra. Cerillo was not cross-examined by defense counsel.

11. The Information, dated November 14, 1996, filed against Marivic Genosa charged her with the crime of PARRICIDE committed with intent to kill, with treachery and evidence premeditation, x x x wilfully, unlawfully and feloniously attack, assault, hit and wound x x x her legitimate husband, with the use of a hard deadly weapon x x x which caused his death.

12. Trial took place on 7 and 14 April 1997, 14 May 1997, 21 July 1997, 17, 22 and 23 September 1997, 12 November 1997, 15 and 16 December 1997, 22 May 1998, and 5 and 6 August 1998.

13. On 23 September 1998, or only fifty (50) days from the day of the last trial date, the Hon. Fortunito L. Madrona, Presiding Judge, RTC-Branch 35, Ormoc City, rendered a JUDGMENT finding Marivic guilty beyond reasonable doubt of the crime of parricide, and further found treachery as an aggravating circumstance, thus sentencing her to the ultimate penalty of DEATH.

14. The case was elevated to this Honorable Court upon automatic review and, under date of 24 January 2000, Marivics trial lawyer, Atty. Gil Marvel P. Tabucanon, filed a Motion to Withdraw as counsel, attaching thereto, as a precautionary measure, two (2) drafts of Appellants Briefs he had prepared for Marivic which, for reasons of her own, were not conformed to by her.

The Honorable Court allowed the withdrawal of Atty. Tabucanon and permitted the entry of appearance of undersigned counsel.

15. Without the knowledge of counsel, Marivic Genosa wrote a letter dated 20 January 2000, to the Chief Justice, coursing the same through Atty. Teresita G. Dimaisip, Deputy Clerk of Court of Chief Judicial Records Office, wherein she submitted her Brief without counsels to the Court.

This letter was stamp-received by the Honorable Court on 4 February 2000.

16. In the meantime, under date of 17 February 2000, and stamp-received by the Honorable Court on 19 February 2000, undersigned counsel filed an URGENT OMNIBUS MOTION praying that the Honorable Court allow the exhumation of Ben Genosa and the re-examination of the cause of his death; allow the examination of 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.

Attached to the URGENT OMNIBUS MOTION was a letter of Dr. Raquel Fortun, then the only qualified forensic pathologist in the country, who opined that the description of the death wound (as culled from the post-mortem findings, Exhibit A) is more akin to a gunshot wound than a beating with a lead pipe.

17. In a RESOLUTION dated 29 September 2000, the Honorable Court partly granted Marivics URGENT OMNIBUS MOTION and remanded the case to the trial court for the reception of expert psychological and/or psychiatric opinion on the battered woman syndrome plea, within ninety (90) days from notice, and, thereafter to forthwith report to this Court the proceedings taken, together with the copies of the TSN and relevant documentary evidence, if any, submitted.

18. On 15 January 2001, Dra. Natividad A. Dayan appeared and testified before the Hon. Fortunito L. Madrona, RTC-Branch 35, Ormoc City.

Immediately before Dra. Dayan was sworn, the Court *a quo* asked if she had interviewed Marivic Genosa. Dra. Dayan informed the Court that interviews were done at the Penal Institution in 1999, but that the clinical interviews and psychological assessment were done at her clinic.

Dra. Dayan testified that she has been a clinical psychologist for twenty (20) years with her own private clinic and connected presently to the De La Salle University as a professor. Before this, she was the Head of the Psychology Department of the Assumption College; a member of the faculty of Psychology at the Ateneo de Manila University and St. Josephs College; and was the counseling psychologist of the National Defense College. She has an AB in Psychology from the University of the Philippines, a Master of Arts in Clinical [Counseling], Psychology from the Ateneo, and a PhD from the U.P. She was the past president of the Psychological Association of the Philippines and is a member of the American Psychological Association. She is the secretary of the International Council of Psychologists from about 68 countries; a member of the Forensic Psychology Association; and a member of the ASEAN [Counseling] Association. She is actively involved with the Philippine Judicial Academy, recently lecturing on the socio-demographic and psychological profile of families involved in domestic violence and nullity cases. She was with the Davide Commission doing research about Military Psychology. She has written a book entitled Energy Global Psychology (together with Drs. Allan Tan and Allan Bernardo). The Genosa case is the first time she has testified as an expert on battered women as this is the first case of that nature.

Dra. Dayan testified that for the research she conducted, on the socio-demographic and psychological profile of families involved in domestic violence, and nullity cases, she looked at about 500 cases over a period of ten (10) years and discovered that there are lots of variables that cause all of this marital conflicts, from domestic violence to infidelity, to psychiatric disorder.

Dra. Dayan described domestic violence to comprise of a lot of incidents of psychological abuse, verbal abuse, and emotional abuse to physical abuse and also sexual abuse.

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Dra. Dayan testified that in her studies, the battered woman usually has a very low opinion of herself. She has a self-defeating and self-sacrificing characteristics. x x x they usually think very lowly of themselves and so when the violence would happen, they usually think that they provoke it, that they were the one who precipitated the violence, they provoke their spouse to be physically, verbally and even sexually abusive to them. Dra. Dayan said that usually a battered x x x comes from a dysfunctional family or from broken homes.

Dra. Dayan said that the batterer, just like the battered woman, also has a very low opinion of himself. But then emerges to have superiority complex and it comes out as being very arrogant, very hostile, very aggressive and very angry. They also had (sic) a very low tolerance for frustrations. A lot of times they are involved in vices like gambling, drinking and drugs. And they become violent. The batterer also usually comes from a dysfunctional family which over-pampers them and makes them feel entitled to do anything. Also, they see often how their parents abused each other so there is a lot of modeling of aggression in the family.

Dra. Dayan testified that there are a lot of reasons why a battered woman does not leave her husband: poverty, self-blame and guilt that she provoked the violence, the cycle itself which makes her hope her husband will change, the belief in her obligations to keep the family intact at all costs for the sake of the children.

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Dra. Dayan said that abused wives react differently to the violence: some leave the house, or lock themselves in another room, or sometimes try to fight back triggering physical violence on both of them. She said that in a normal marital relationship, abuses also happen, but these are not consistent, not chronic, are not happening day in [and] day out. In an abnormal marital relationship, the abuse occurs day in and day out, is long lasting and even would cause hospitalization on the victim and even death on the victim.

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Dra. Dayan said that as a result of the battery of psychological tests she administered, it was her opinion that Marivic fits the profile of a battered woman because inspite of her feeling of self-confidence which we can see at times there are really feeling (sic) of loss, such feelings of humiliation which she sees herself as damaged and as a broken person. And at the same time she still has the imprint of all the abuses that she had experienced in the past.

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Dra. Dayan said Marivic thought of herself as a loving wife and did not even consider filing for nullity or legal separation inspite of the abuses. It was at the time of the tragedy that Marivic then thought of herself as a victim.

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19. On 9 February 2001, Dr. Alfredo Pajarillo, a physician, who has since passed away, appeared and testified before RTC-Branch 35, Ormoc City.

Dr. Pajarillo was a Diplomate of the Philippine Board of Psychiatry; a Fellow of the Philippine Board of Psychiatry and a Fellow of the Philippine Psychiatry Association. He was in the practice of psychiatry for thirty-eight (38) years. Prior to being in private practice, he was connected with the Veterans Memorial Medical Centre where he gained his training on psychiatry and neurology. After that, he was called to active duty in the Armed Forces of the Philippines, assigned to the V. Luna Medical Center for twenty six (26) years. Prior to his retirement from government service, he obtained the rank of Brigadier General. He obtained his medical degree from the University of Santo Tomas. He was also a member of the World Association of Military Surgeons; the Quezon City Medical Society; the Cagayan Medical Society; and the

Philippine Association of Military Surgeons.

He authored The Comparative Analysis of Nervous Breakdown in the Philippine Military Academy from the Period 1954 1978 which was presented twice in international congresses. He also authored The Mental Health of the Armed Forces of the Philippines 2000, which was likewise published internationally and locally. He had a medical textbook published on the use of Prasepam on a Parke-Davis grant; was the first to use Enanthate (siquiline), on an E.R. Squibb grant; and he published the use of the drug Zopiclom in 1985-86.

Dr. Pajarillo explained that psychiatry deals with the functional disorder of the mind and neurology deals with the ailment of the brain and spinal cord enlarged. Psychology, on the other hand, is a bachelor degree and a doctorate degree; while one has to finish medicine to become a specialist in psychiatry.

Even only in his 7th year as a resident in V. Luna Medical Centre, Dr. Pajarillo had already encountered a suit involving violent family relations, and testified in a case in 1964. In the Armed Forces of the Philippines, violent family disputes abound, and he has seen probably ten to twenty thousand cases. In those days, the primordial intention of therapy was reconciliation. As a result of his experience with domestic violence cases, he became a consultant of the Battered Woman Office in Quezon City under Atty. Nenita Deproza.

As such consultant, he had seen around forty (40) cases of severe domestic violence, where there is physical abuse: such as slapping, pushing, verbal abuse, battering and boxing a woman even to an unconscious state such that the woman is sometimes confined. The affliction of Post-Traumatic Stress Disorder depends on the vulnerability of the victim. Dr. Pajarillo said that if the victim is not very healthy, perhaps one episode of violence may induce the disorder; if the psychological stamina and physiologic constitutional stamina of the victim is stronger, it will take more repetitive trauma to precipitate the post-traumatic stress disorder and this x x x is very dangerous.

In psychiatry, the post-traumatic stress disorder is incorporated under the anxiety neurosis or neurologic anxcietism. It is produced by overwhelming brutality, trauma.

X X X X X X X X X

Dr. Pajarillo explained that with neurotic anxiety, the victim relives the beating or trauma as if it were real, although she is not actually being beaten at that time. She thinks of nothing but the suffering.

X X X X X X X X X

A woman who suffers battery has a tendency to become neurotic, her emotional tone is unstable, and she is irritable and restless. She tends to become hard-headed and persistent. She has higher sensitivity and her self-world is damaged.

Dr. Pajarillo said that an abnormal family background relates to an individuals illness, such as the deprivation of the continuous care and love of the parents. As to the batterer, he normally internalizes what is around him within the environment. And it becomes his own personality. He is very competitive; he is aiming high all the time; he is so macho; he shows his strong faade but in it there are doubts in himself and prone to act without thinking.

X X X X X X X X X

Dr. Pajarillo emphasized that even though without the presence of the precipator (sic) or the one who administered the battering, that re-experiencing of the trauma occurred (sic) because the individual cannot control it. It will just come up in her mind or in his mind.

X X X X X X X X

Dr. Pajarillo said that a woman suffering post traumatic stress disorder try to defend themselves, and primarily with knives. Usually pointed weapons or any weapon that is available in the immediate surrounding or in a hospital x x x because that abound in the household. He said a victim resorts to weapons when she has reached the lowest rock bottom of her life and there is no other recourse left on her but to act decisively.

X X X X X X X X

Dr. Pajarillo testified that he met Marivic Genosa in his office in an interview he conducted for two (2) hours and seventeen (17) minutes. He used the psychological evaluation and social case studies as a help in forming his diagnosis. He came out with a Psychiatric Report, dated 22 January 2001.

X X X X X X X X

On cross-examination by the private prosecutor, Dr. Pajarillo said that at the time she killed her husband Marivicc mental condition was that she was re-experiencing the trauma. He said that we are trying to explain scientifically that the re-experiencing of the trauma is not controlled by Marivic. It will just come in flashes and probably at that point in time that things happened when the re-experiencing of the trauma flashed in her mind. At the time he interviewed Marivic she was more subdued, she was not super alert anymore x x x she is mentally stress (sic) because of the predicament she is involved.

X X X X X X X X

20. No rebuttal evidence or testimony was presented by either the private or the public prosecutor. Thus, in accord with the Resolution of this Honorable Court, the records of the partially re-opened trial a *quo* were elevated.^[9]

Ruling of the Trial Court

Finding the proffered theory of self-defense untenable, the RTC gave credence to the prosecution evidence that appellant had killed the deceased while he was in bed sleeping. Further, the trial court appreciated the generic aggravating circumstance of treachery, because Ben Genosa was supposedly defenseless when he was killed -- lying in bed asleep when Marivic smashed him with a pipe at the back of his head.

The capital penalty having been imposed, the case was elevated to this Court for automatic review.

Supervening Circumstances

On February 19, 2000, appellant filed an Urgent Omnibus Motion praying that this Court allow (1) the exhumation of Ben Genosa and the reexamination of the cause of his death; (2) the examination of appellant by qualified psychologists and psychiatrists to determine her state of mind at the time she had killed her spouse; and (3) the inclusion of the said experts reports in the records of the case for purposes of the automatic review or, in the alternative, a partial reopening of the case for the lower court to admit the experts testimonies.

On September 29, 2000, this Court issued a Resolution granting in part appellants Motion, remanding the case to the trial court for the reception of expert psychological and/or psychiatric opinion on the battered woman syndrome plea; and requiring the lower court to report thereafter to this Court the proceedings taken as well as to submit copies of the TSN and additional evidence, if any.

Acting on the Courts Resolution, the trial judge authorized the examination of Marivic by two clinical psychologists, Drs. Natividad Dayan^[10] and Alfredo Pajarillo,^[11] supposedly experts on domestic violence. Their testimonies, along with their documentary evidence, were then presented to and admitted by the lower court before finally being submitted to this Court to form part of the records of the case.^[12]

The Issues

Appellant assigns the following alleged errors of the trial court for this Courts consideration:

1. The trial court gravely erred in promulgating an obviously hasty decision without reflecting on the evidence adduced as to self-defense.
2. The trial court gravely erred in finding as a fact that Ben and Marivic Genosa were legally married and that she was therefore liable for parricide.
3. The trial court gravely erred finding the cause of death to be by beating with a pipe.
4. The trial court gravely erred in ignoring and disregarding evidence adduced from impartial and unbiased witnesses that Ben Genosa was a drunk, a gambler, a womanizer and wife-beater; and further gravely erred in concluding that Ben Genosa was a battered husband.
5. The trial court gravely erred in not requiring testimony from the children of Marivic Genosa.
6. The trial court gravely erred in concluding that Marivics flight to Manila and her subsequent apologies were indicia of guilt, instead of a clear attempt to save the life of her unborn child.
7. The trial court gravely erred in concluding that there was an aggravating circumstance of treachery.
8. The trial court gravely erred in refusing to re-evaluate the traditional elements in determining the existence of self-defense and defense of foetus in this case, thereby erroneously convicting Marivic Genosa of the crime of parricide and condemning her to the ultimate penalty of death.^[13]

In the main, the following are the essential legal issues: (1) whether appellant acted in self-defense and in defense of her fetus; and (2) whether treachery attended the killing of Ben Genosa.

The Courts Ruling

The appeal is partly meritorious.

Collateral Factual Issues

The first six assigned errors raised by appellant are factual in nature, if not collateral to the resolution of the principal issues. As consistently held by this Court, the findings of the trial court on the credibility of witnesses and their testimonies are entitled to a high degree of respect and will not be disturbed on appeal in the absence of any showing that the trial judge gravely abused his discretion or overlooked, misunderstood or misapplied material facts or circumstances of weight and substance that could affect the outcome of the case. ^[14]

In appellants first six assigned items, we find no grave abuse of discretion, reversible error or misappreciation of material facts that would reverse or modify the trial courts disposition of the case. In any event, we will now briefly dispose of these alleged errors of the trial court.

First, we do not agree that the lower court promulgated an obviously hasty decision without reflecting on the evidence adduced as to self-defense. We note that in his 17-page Decision, Judge Fortunito L. Madrona summarized the testimonies of both the prosecution and the defense witnesses and -- on the basis of those and of the documentary evidence on record -- made his evaluation, findings and conclusions. He wrote a 3-page discourse assessing the testimony and the self-defense theory of the accused. While she, or even this Court, may not agree with the trial judges conclusions, we cannot peremptorily conclude, absent substantial evidence, that he failed to *reflect* on the evidence presented.

Neither do we find the appealed Decision to have been made in an obviously hasty manner. The Information had been filed with the lower court on November 14, 1996. Thereafter, trial began and at least 13 hearings were held for over a year. It took the trial judge about two months from the conclusion of trial to promulgate his judgment. That he conducted the trial and resolved the case with dispatch should not be taken against him, much less used to condemn him for being unduly hasty. If at all, the dispatch with which he handled the case should be lauded. In any case, we find his actions in substantial compliance with his constitutional obligation. ^[15]

Second, the lower court did not err in finding as a fact that Ben Genosa and appellant had been legally married, despite the non-presentation of their marriage contract. In *People v. Malabago*, ^[16] this Court held:

The key element in parricide is the relationship of the offender with the victim. In the case of parricide of a spouse, the best proof of the relationship between the accused and the deceased is the marriage certificate. In the absence of a marriage certificate, however, oral evidence of the fact of marriage may be considered by the

trial court if such proof is not objected to.

Two of the prosecution witnesses -- namely, the mother and the brother of appellants deceased spouse -- attested in court that Ben had been married to Marivic.^[17] The defense raised no objection to these testimonies. Moreover, during her direct examination, appellant herself made a judicial admission of her marriage to Ben.^[18] Axiomatic is the rule that a judicial admission is conclusive upon the party making it, except only when there is a showing that (1) the admission was made through a palpable mistake, or (2) no admission was in fact made.^[19] Other than merely attacking the non-presentation of the marriage contract, the defense offered no proof that the admission made by appellant in court as to the fact of her marriage to the deceased was made through a palpable mistake.

Third, under the circumstances of this case, the specific or direct cause of Bens death -- whether by a gunshot or by beating with a pipe -- has no legal consequence. As the Court elucidated in its September 29, 2000 Resolution, [c]onsidering that the appellant has admitted the fact of killing her husband and the acts of hitting his nape with a metal pipe and of shooting him at the back of his head, the Court believes that exhumation is unnecessary, if not immaterial, to determine *which of said acts actually caused the victims death*. Determining which of these admitted acts caused the death is not dispositive of the guilt or defense of appellant.

Fourth, we cannot fault the trial court for not fully appreciating evidence that Ben was a drunk, gambler, womanizer and wife-beater. Until this case came to us for automatic review, appellant had not raised the novel defense of battered woman syndrome, for which such evidence may have been relevant. Her theory of self-defense was then the crucial issue before the trial court. As will be discussed shortly, the legal requisites of self-defense under prevailing jurisprudence ostensibly appear inconsistent with the surrounding facts that led to the death of the victim. Hence, his personal character, especially his past behavior, did not constitute vital evidence at the time.

Fifth, the trial court surely committed no error in not requiring testimony from appellants children. As correctly elucidated by the solicitor general, all criminal actions are prosecuted under the direction and control of the public prosecutor, in whom lies the discretion to determine which witnesses and evidence are necessary to present.^[20] As the former further points out, neither the trial court nor the prosecution prevented appellant from presenting her children as witnesses. Thus, she cannot now fault the lower court for not requiring them to testify.

Finally, merely collateral or corroborative is the matter of whether the flight of Marivic to Manila and her subsequent apologies to her brother-in-law are indicia of her guilt or are attempts to save the life of her unborn child. Any reversible error as to the trial courts appreciation of these circumstances has little bearing on the final resolution of the case.

First Legal Issue:
Self-Defense and Defense of a Fetus

Appellant admits killing Ben Genosa but, to avoid criminal liability, invokes self-defense and/or defense of her unborn child. When the accused admits killing the victim, it is incumbent upon her to prove any claimed justifying circumstance by clear and convincing evidence.^[21] Well-settled is the

rule that in criminal cases, self-defense (and similarly, defense of a stranger or third person) shifts the burden of proof from the prosecution to the defense. ^[22]

The Battered Woman Syndrome

In claiming self-defense, appellant raises the novel theory of the battered woman syndrome. While new in Philippine jurisprudence, the concept has been recognized in foreign jurisdictions as a form of self-defense or, at the least, incomplete self-defense. ^[23] 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. ^[24]

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 once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman. ^[25]

Battered women exhibit common personality traits, such as low self-esteem, traditional beliefs about the home, the family and the female sex role; emotional dependence upon the dominant male; the tendency to accept responsibility for the batterers actions; and false hopes that the relationship will improve. ^[26]

More graphically, the battered woman syndrome is characterized by the so-called cycle of violence, ^[27] which has three phases: (1) the tension-building phase; (2) the acute battering incident; and (3) the tranquil, loving (or, at least, nonviolent) phase. ^[28]

During the **tension-building phase**, minor battering occurs -- it could be verbal or slight physical abuse or another form of hostile behavior. The woman usually tries to pacify the batterer through a show of kind, nurturing behavior; or by simply staying out of his way. What actually happens is that she allows herself to be abused in ways that, to her, are comparatively minor. All she wants is to prevent the escalation of the violence exhibited by the batterer. This wish, however, proves to be double-edged, because her placatory and passive behavior legitimizes his belief that he has the right to abuse her in the first place.

However, the techniques adopted by the woman in her effort to placate him are not usually successful, and the verbal and/or physical abuse worsens. Each partner senses the imminent loss of control and the growing tension and despair. Exhausted from the persistent stress, the battered woman soon withdraws emotionally. But the more she becomes emotionally unavailable, the more the batterer becomes angry, oppressive and abusive. Often, at some unpredictable point, the

violence spirals out of control and leads to an acute battering incident.^[29]

The **acute battering incident** is said to be characterized by brutality, destructiveness and, sometimes, death. The battered woman deems this incident as unpredictable, yet also inevitable. During this phase, she has no control; only the batterer may put an end to the violence. Its nature can be as unpredictable as the time of its explosion, and so are his reasons for ending it. The battered woman usually realizes that she cannot reason with him, and that resistance would only exacerbate her condition.

At this stage, she has a sense of detachment from the attack and the terrible pain, although she may later clearly remember every detail. Her apparent passivity in the face of acute violence may be rationalized thus: the batterer is almost always much stronger physically, and she knows from her past painful experience that it is futile to fight back. Acute battering incidents are often very savage and out of control, such that innocent bystanders or intervenors are likely to get hurt.^[30]

The final phase of the cycle of violence begins when the acute battering incident ends. During this **tranquil period**, the couple experience profound relief. On the one hand, the batterer may show a tender and nurturing behavior towards his partner. He knows that he has been viciously cruel and tries to make up for it, begging for her forgiveness and promising never to beat her again. On the other hand, the battered woman also tries to convince herself that the battery will never happen again; that her partner will change for the better; and that this good, gentle and caring man is the real person whom she loves.

A battered woman usually believes that she is the sole anchor of the emotional stability of the batterer. Sensing his isolation and despair, she feels responsible for his well-being. The truth, though, is that the chances of his reforming, or seeking or receiving professional help, are very slim, especially if she remains with him. Generally, only after she leaves him does he seek professional help as a way of getting her back. Yet, it is in this phase of remorseful reconciliation that she is most thoroughly tormented psychologically.

The illusion of absolute interdependency is well-entrenched in a battered woman's psyche. In this phase, she and her batterer are indeed emotionally dependent on each other -- she for his nurturant behavior, he for her forgiveness. Underneath this miserable cycle of tension, violence and forgiveness, each partner may believe that it is better to die than to be separated. Neither one may really feel independent, capable of functioning without the other.^[31]

History of Abuse in the Present Case

To show the history of violence inflicted upon appellant, the defense presented several witnesses. She herself described her heart-rending experience as follows:

ATTY. TABUCANON

Q How did you describe your marriage with Ben Genosa?

A In the first year, I lived with him happily but in the subsequent year he was cruel to me and a behavior of habitual drinker.

Q You said that in the subsequent year of your marriage, your husband was abusive to you and cruel. In what way was this abusive and cruelty manifested to you?

A He always provoke me in everything, he always slap me and sometimes he pinned me down on the bed and sometimes beat me.

Q How many times did this happen?

A Several times already.

Q What did you do when these things happen to you?

A I went away to my mother and I ran to my father and we separate each other.

Q What was the action of Ben Genosa towards you leaving home?

A He is following me, after that he sought after me.

Q What will happen when he follow you?

A He said he changed, he asked for forgiveness and I was convinced and after that I go to him and he said sorry.

Q During those times that you were the recipient of such cruelty and abusive behavior by your husband, were you able to see a doctor?

A Yes, sir.

Q Who are these doctors?

A The company physician, Dr. Dino Caing, Dr. Lucero and Dra. Cerillo.

X X X X X X X X X

Q You said that you saw a doctor in relation to your injuries?

A Yes, sir.

Q Who inflicted these injuries?

A Of course my husband.

Q You mean Ben Genosa?

A Yes, sir.

X X X X X X X X X

[Court] /to the witness

Q How frequent was the alleged cruelty that you said?

A Everytime he got drunk.

Q No, from the time that you said the cruelty or the infliction of injury inflicted on your occurred, after your marriage, from that time on, how frequent was the occurrence?

A Everytime he got drunk.

Q Is it daily, weekly, monthly or how many times in a month or in a week?

A Three times a week.

Q Do you mean three times a week he would beat you?

A Not necessarily that he would beat me but sometimes he will just quarrel me. [32]

Referring to his Out-Patient Chart [33] on Marivic Genosa at the Philphos Hospital, Dr. Dino D. Caing bolstered her foregoing testimony on chronic battery in this manner:

Q So, do you have a summary of those six (6) incidents which are found in the chart of your clinic?

A Yes, sir.

Q Who prepared the list of six (6) incidents, Doctor?

A I did.

Q Will you please read the physical findings together with the dates for the record.

- A 1. May 12, 1990 - physical findings are as follows: Hematoma (R) lower eyelid and redness of eye. Attending physician: Dr. Lucero;
2. March 10, 1992 - Contusion-Hematoma (L) lower orbital area, pain and contusion (R) breast. Attending physician: Dr. Canora;
3. March 26, 1993 - Abrasion, Furuncle (L) Axilla;
4. August 1, 1994 - Pain, mastitis (L) breast, 2^o to trauma. Attending physician: Dr. Caing;
5. April 17, 1995 - Trauma, tenderness (R) Shoulder. Attending physician: Dr. Canora; and
6. June 5, 1995 - Swelling Abrasion (L) leg, multiple contusion Pregnancy. Attending physician: Dr. Canora.

Q Among the findings, there were two (2) incidents wherein you were the attending physician, is that correct?

A Yes, sir.

Q Did you actually physical examine the accused?

A Yes, sir.

Q Now, going to your finding no. 3 where you were the one who attended the patient. What do you mean by abrasion furuncle left axilla?

A Abrasion is a skin wound usually when it comes in contact with something rough substance if force is applied.

Q What is meant by furuncle axilla?

A It is secondary of the light infection over the abrasion.

Q What is meant by pain mastitis secondary to trauma?

A So, in this 4th episode of physical injuries there is an inflammation of left breast. So, [pain] meaning there is tenderness. When your breast is traumatized, there is tenderness pain.

Q So, these are objective physical injuries. Doctor?

X X X X X X X X

Q Were you able to talk with the patient?

A Yes, sir.

Q What did she tell you?

A As a doctor-patient relationship, we need to know the cause of these injuries. And she told me that it was done to her by her husband.

Q You mean, Ben Genosa?

A Yes, sir.

X X X X X X X X

ATTY. TABUCANON:

Q By the way Doctor, were you able to physical examine the accused sometime in the month of November, 1995 when this incident happened?

A As per record, yes.

Q What was the date?

A It was on November 6, 1995.

Q So, did you actually see the accused physically?

A Yes, sir.

Q On November 6, 1995, will you please tell this Honorable Court, was the patient pregnant?

A Yes, sir.

Q Being a doctor, can you more engage at what stage of pregnancy was she?

A Eight (8) months pregnant.

Q So in other words, it was an advance stage of pregnancy?

A Yes, sir.

Q What was your November 6, 1995 examination, was it an examination about her pregnancy or for some other findings?

A No, she was admitted for hypertension headache which complicates her pregnancy.

Q When you said admitted, meaning she was confined?

A Yes, sir.

Q For how many days?

A One day.

Q Where?

A At PHILPHOS Hospital.

X X X X X X X X

Q Lets go back to the clinical history of Marivic Genosa. You said that you were able to examine her personally on November 6, 1995 and she was 8 months pregnant.

What is this all about?

A Because she has this problem of tension headache secondary to hypertension and I think I have a record here, also the same period from 1989 to 1995, she had a consultation for twenty-three (23) times.

Q For what?

A Tension headache.

Q Can we say that specially during the latter consultation, that the patient had hypertension?

A The patient definitely had hypertension. It was refractory to our treatment. She does not response when the medication was given to her, because tension headache is more or less stress related and emotional in nature.

Q What did you deduce of tension headache when you said is emotional in nature?

A From what I deduced as part of our physical examination of the patient is the family history in line of giving the root cause of what is causing this disease. So, from the moment you ask to the patient all comes from the domestic problem.

Q You mean problem in her household?

A Probably.

Q Can family trouble cause elevation of blood pressure, Doctor?

A Yes, if it is emotionally related and stressful it can cause increases in hypertension which is unfortunately does not response to the medication.

Q In November 6, 1995, the date of the incident, did you take the blood pressure of the accused?

A On November 6, 1995 consultation, the blood pressure was 180/120.

Q Is this considered hypertension?

A Yes, sir, severe.

Q Considering that she was 8 months pregnant, you mean this is dangerous level of blood pressure?

A It was dangerous to the child or to the fetus. ^[34]

Another defense witness, Teodoro Sarabia, a former neighbor of the Genosas in Isabel, Leyte, testified that he had seen the couple quarreling several times; and that on some occasions Marivic would run to him with bruises, confiding that the injuries were inflicted upon her by Ben. ^[35]

Ecel Arano also testified ^[36] that for a number of times she had been asked by Marivic to sleep

at the Genosa house, because the latter feared that Ben would come home drunk and hurt her. On one occasion that Ecel did sleep over, she was awakened about ten oclock at night, because the couple were very noisy and I heard something was broken like a vase. Then Marivic came running into Ecel's room and locked the door. Ben showed up by the window grill atop a chair, scaring them with a knife.

On the afternoon of November 15, 1995, Marivic again asked her help -- this time to find Ben -- but they were unable to. They returned to the Genosa home, where they found him already drunk. Again afraid that he might hurt her, Marivic asked her to sleep at their house. Seeing his state of drunkenness, Ecel hesitated; and when she heard the couple start arguing, she decided to leave.

On that same night that culminated in the death of Ben Genosa, at least three other witnesses saw or heard the couple quarreling. ^[37] Marivic relates in detail the following backdrop of the fateful night when life was snuffed out of him, showing in the process a vivid picture of his cruelty towards her:

ATTY. TABUCANON:

Q Please tell this Court, can you recall the incident in November 15, 1995 in the evening?

A Whole morning and in the afternoon, I was in the office working then after office hours, I boarded the service bus and went to Bilwang. When I reached Bilwang, I immediately asked my son, where was his father, then my second child said, he was not home yet. I was worried because that was payday, I was anticipating that he was gambling. So while waiting for him, my eldest son arrived from school, I prepared dinner for my children.

Q This is evening of November 15, 1995?

A Yes, sir.

Q What time did Ben Genosa arrive?

A When he arrived, I was not there, I was in Isabel looking for him.

Q So when he arrived you were in Isabel looking for him?

A Yes, sir.

Q Did you come back to your house?

A Yes, sir.

Q By the way, where was your conjugal residence situated this time?

A Bilwang.

Q Is this your house or you are renting?

A Renting.

Q What time were you able to come back in your residence at Bilwang?

A I went back around almost 8:00 oclock.

Q What happened when you arrived in your residence?

A When I arrived home with my cousin Ecel whom I requested to sleep with me at that time because I had fears that he was again drunk and I was worried that he would again beat me

so I requested my cousin to sleep with me, but she resisted because she had fears that the same thing will happen again last year.

Q Who was this cousin of yours who you requested to sleep with you?

A Ecel Arao, the one who testified.

Q Did Ecel sleep with you in your house on that evening?

A No, because she expressed fears, she said her father would not allow her because of Ben.

Q During this period November 15, 1995, were you pregnant?

A Yes, 8 months.

Q How advance was your pregnancy?

A Eight (8) months.

Q Was the baby subsequently born?

A Yes, sir.

Q Whats the name of the baby you were carrying at that time?

A Marie Bianca.

Q What time were you able to meet personally your husband?

A Yes, sir.

Q What time?

A When I arrived home, he was there already in his usual behavior.

Q Will you tell this Court what was his disposition?

A He was drunk again, he was yelling in his usual unruly behavior.

Q What was he yelling all about?

A His usual attitude when he got drunk.

Q You said that when you arrived, he was drunk and yelling at you? What else did he do if any?

A He is nagging at me for following him and he dared me to quarrel him.

Q What was the cause of his nagging or quarreling at you if you know?

A He was angry at me because I was following x x x him, looking for him. I was just worried he might be overly drunk and he would beat me again.

Q You said that he was yelling at you, what else, did he do to you if any?

A He was nagging at me at that time and I just ignore him because I want to avoid trouble for fear that he will beat me again. Perhaps he was disappointed because I just ignore him of his provocation and he switch off the light and I said to him, why did you switch off the light when the children were there. At that time I was also attending to my children who were doing their assignments. He was angry with me for not answering his challenge, so he went to the kitchen and [got] a bolo and cut the antenna wire to stop me from watching television.

Q What did he do with the bolo?

A He cut the antenna wire to keep me from watching T.V.

Q What else happened after he cut the wire?

A He switch off the light and the children were shouting because they were scared and he was already holding the bolo.

Q How do you described this bolo?

A 1 1/2 feet.

Q What was the bolo used for usually?

A For chopping meat.

Q You said the children were scared, what else happened as Ben was carrying that bolo?

A He was about to attack me so I run to the room.

Q What do you mean that he was about to attack you?

A When I attempt to run he held my hands and he whirled me and I fell to the bedside.

Q So when he whirled you, what happened to you?

A I screamed for help and then he left.

Q You said earlier that he whirled you and you fell on the bedside?

A Yes, sir.

Q You screamed for help and he left, do you know where he was going?

A Outside perhaps to drink more.

Q When he left what did you do in that particular time?

A I packed all his clothes.

Q What was your reason in packing his clothes?

A I wanted him to leave us.

Q During this time, where were your children, what were their reactions?

A After a couple of hours, he went back again and he got angry with me for packing his clothes, then he dragged me again of the bedroom holding my neck.

Q You said that when Ben came back to your house, he dragged you? How did he drag you?

COURT INTERPRETER:

The witness demonstrated to the Court by using her right hand flexed forcibly in her front neck)

A And he dragged me towards the door backward.

ATTY. TABUCANON:

Q Where did he bring you?

A Outside the bedroom and he wanted to get something and then he kept on shouting at me that you might as well be killed so there will be nobody to nag me.

Q So you said that he dragged you towards the drawer?

A Yes, sir.

Q What is there in the drawer?

A I was aware that it was a gun.

COURT INTERPRETER:

(At this juncture the witness started crying).

ATTY. TABUCANON:

Q Were you actually brought to the drawer?

A Yes, sir.

Q What happened when you were brought to that drawer?

A He dragged me towards the drawer and he was about to open the drawer but he could not open it because he did not have the key then he pulled his wallet which contained a blade about 3 inches long and I was aware that he was going to kill me and I smashed his arm and then the wallet and the blade fell. The one he used to open the drawer I saw, it was a pipe about that long, and when he was about to pick-up the wallet and the blade, I smashed him then I ran to the other room, and on that very moment everything on my mind was to pity on myself, then the feeling I had on that very moment was the same when I was admitted in PHILPHOS Clinic, I was about to vomit.

COURT INTERPRETER:

(The witness at this juncture is crying intensely).

X X X X X X X X X

ATTY. TABUCANON:

Q Talking of drawer, is this drawer outside your room?

A Outside.

Q In what part of the house?

A Dining.

Q Where were the children during that time?

A My children were already asleep.

Q You mean they were inside the room?

A Yes, sir.

Q You said that he dropped the blade, for the record will you please describe this blade about 3 inches long, how does it look like?

A Three (3) inches long and 1/2 inch wide.

Q Is it a flexible blade?

A Its a cutter.

Q How do you describe the blade, is it sharp both edges?

A Yes, because he once used it to me.

Q How did he do it?

A He wanted to cut my throat.

Q With the same blade?

A Yes, sir, that was the object used when he intimidate me. [38]

In addition, Dra. Natividad Dayan was called by the RTC to testify as an expert witness to assist it in understanding the psyche of a battered person. She had met with Marivic Genosa for five sessions totaling about seventeen hours. Based on their talks, the former briefly related the latters ordeal to the court *a quo* as follows:

Q: What can you say, that you found Marivic as a battered wife? Could you in laymans term describe to this Court what her life was like as said to you?

A: What I remember happened then was it was more than ten years, that she was suffering emotional anguish. There were a lot of instances of abuses, to emotional abuse, to verbal abuse and to physical abuse. The husband had a very meager income, she was the one who was practically the bread earner of the family. The husband was involved in a lot of vices, going out with barkadas, drinking, even womanizing being involved in cockfight and going home very angry and which will trigger a lot of physical abuse. She also had the experience a lot of taunting from the husband for the reason that the husband even accused her of infidelity, the husband was saying that the child she was carrying was not his own. So she was very angry, she was at the same time very depressed because she was also aware, almost like living in purgatory or even hell when it was happening day in and day out. [39]

In cross-examining Dra. Dayan, the public prosecutor not merely elicited, but wittingly or unwittingly put forward, additional supporting evidence as shown below:

Q In your first encounter with the appellant in this case in 1999, where you talked to her about three hours, what was the most relevant information did you gather?

A The most relevant information was the tragedy that happened. The most important information were escalating abuses that she had experienced during her marital life.

Q Before you met her in 1999 for three hours, we presume that you already knew of the facts of the case or at least you have substantial knowledge of the facts of the case?

A I believe I had an idea of the case, but I do not know whether I can consider them as substantial.

X X X X X X X X

Q Did you gather an information from Marivic that on the side of her husband they were fond of battering their wives?

A I also heard that from her?

Q You heard that from her?

A Yes, sir.

Q Did you ask for a complete example who are the relatives of her husband that were fond of battering their wives?

A What I remember that there were brothers of her husband who are also battering their wives.

Q Did she not inform you that there was an instance that she stayed in a hotel in Ormoc where her husband followed her and battered [her] several times in that room?

A She told me about that.

Q Did she inform you in what hotel in Ormoc?

A Sir, I could not remember but I was told that she was battered in that room.

Q Several times in that room?

A Yes, sir. What I remember was that there is no problem about being battered, it really happened.

Q Being an expert witness, our jurisprudence is not complete on saying this matter. I think that is the first time that we have this in the Philippines, what is your opinion?

A Sir, my opinion is, she is really a battered wife and in this kind happened, it was really a self-defense. I also believe that there had been provocation and I also believe that she became a disordered person. She had to suffer anxiety reaction because of all the battering that happened and so she became an abnormal person who had lost shes not during the time and that is why it happened because of all the physical battering, emotional battering, all the psychological abuses that she had experienced from her husband.

Q I do believe that she is a battered wife. Was she extremely battered?

A Sir, it is an extreme form of battering. Yes. ^[40]

Parenthetically, the credibility of appellant was demonstrated as follows:

Q And you also said that you administered [the] objective personality test, what x x x [is this] all about?

A The objective personality test is the Millon Clinical Multiaxial Inventory. The purpose of that test is to find out about the lying prone[ne]ss of the person.

Q What do you mean by that?

A Meaning, am I dealing with a client who is telling me the truth, or is she someone who can exaggerate or x x x [will] tell a lie[?]

Q And what did you discover on the basis of this objective personality test?

A She was a person who passed the honesty test. Meaning she is a person that I can trust. That the data that Im gathering from her are the truth. ^[41]

The other expert witness presented by the defense, Dr. Alfredo Pajarillo, testified on his Psychiatric Report, ^[42] which was based on his interview and examination of Marivic Genosa. The

Report said that during the first three years of her marriage to Ben, everything looked good -- the atmosphere was fine, normal and happy -- until Ben started to be attracted to other girls and was also enticed in[to] gambling[,] especially cockfighting. x x x. At the same time Ben was often joining his *barkada* in drinking sprees.

The drinking sprees of Ben greatly changed the attitude he showed toward his family, particularly to his wife. The Report continued: At first, it was verbal and emotional abuses but as time passed, he became physically abusive. Marivic claimed that the viciousness of her husband was progressive every time he got drunk. It was a painful ordeal Marivic had to anticipate whenever she suspected that her husband went for a drinking [spree]. They had been married for twelve years[;] and practically more than eight years, she was battered and maltreated relentlessly and mercilessly by her husband whenever he was drunk.

Marivic sought the help of her mother-in-law, but her efforts were in vain. Further quoting from the Report, [s]he also sought the advice and help of close relatives and well-meaning friends in spite of her feeling ashamed of what was happening to her. But incessant battering became more and more frequent and more severe. x x x. [43]

From the totality of evidence presented, there is indeed no doubt in the Courts mind that Appellant Marivic Genosa was a severely abused person.

Effect of Battery on Appellant

Because of the recurring cycles of violence experienced by the abused woman, her state of mind metamorphoses. In determining her state of mind, we cannot rely merely on the judgment of an ordinary, reasonable person who is evaluating the events immediately surrounding the incident. A Canadian court has aptly pointed out that expert evidence on the psychological effect of battering on wives and common law partners are both relevant and necessary. How can the mental state of the appellant be appreciated without it? The average member of the public may ask: Why would a woman put up with this kind of treatment? Why should she continue to live with such a man? How could she love a partner who beat her to the point of requiring hospitalization? We would expect the woman to pack her bags and go. Where is her self-respect? Why does she not cut loose and make a new life for herself? Such is the reaction of the average person confronted with the so-called battered wife syndrome. [44]

To understand the syndrome properly, however, ones 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. [45]

The theory of BWS formulated by Lenore Walker, as well as her research on domestic violence, has had a significant impact in the United States and the United Kingdom on the treatment and prosecution of cases, in which a battered woman is charged with the killing of her violent partner. The psychologist explains that the cyclical nature of the violence inflicted upon the battered woman immobilizes the latters ability to act decisively in her own interests, making her feel

trapped in the relationship with no means of escape.^[46] In her years of research, Dr. Walker found that the abuse often escalates at the point of separation and battered women are in greater danger of dying then.^[47]

Corroborating these research findings, Dra. Dayan said that the battered woman usually has a very low opinion of herself. She has x x x self-defeating and self-sacrificing characteristics. x x x [W]hen the violence would happen, they usually think that they provoke[d] it, that they were the one[s] who precipitated the violence[; that] they provoke[d] their spouse to be physically, verbally and even sexually abusive to them.^[48]

According to Dra. Dayan, there are a lot of reasons why a battered woman does not readily leave an abusive partner -- poverty, self-blame and guilt arising from the latter's belief that she provoked the violence, that she has an obligation to keep the family intact at all cost for the sake of their children, and that she is the only hope for her spouse to change.^[49]

The testimony of another expert witness, Dr. Pajarillo, is also helpful. He had previously testified in suits involving violent family relations, having evaluated probably ten to twenty thousand violent family disputes within the Armed Forces of the Philippines, wherein such cases abounded. As a result of his experience with domestic violence cases, he became a consultant of the Battered Woman Office in Quezon City. As such, he got involved in about forty (40) cases of severe domestic violence, in which the physical abuse on the woman would sometimes even lead to her loss of consciousness.^[50]

Dr. Pajarillo explained that overwhelming brutality, trauma could result in posttraumatic stress disorder, a form of anxiety neurosis or neurologic anxiety.^[51] After being repeatedly and severely abused, battered persons may believe that they are essentially helpless, lacking power to change their situation. x x x [A]cute battering incidents can have the effect of stimulating the development of coping responses to the trauma at the expense of the victims ability to muster an active response to try to escape further trauma. Furthermore, x x x the victim ceases to believe that anything she can do will have a predictable positive effect.^[52]

A study^[53] conducted by Martin Seligman, a psychologist at the University of Pennsylvania, found that even if a person has control over a situation, but believes that she does not, she will be more likely to respond to that situation with coping responses rather than trying to escape. He said that it was the cognitive aspect -- the individual's thoughts -- that proved all-important. He referred to this phenomenon as learned helplessness. [T]he truth or facts of a situation turn out to be less important than the individual's set of beliefs or perceptions concerning the situation. Battered women don't attempt to leave the battering situation, even when it may seem to outsiders that escape is possible, because they cannot predict their own safety; they believe that nothing they or anyone else does will alter their terrible circumstances.^[54]

Thus, just as the battered woman believes that she is somehow responsible for the violent behavior of her partner, she also believes that he is capable of killing her, and that there is no

escape.^[55] Battered women feel unsafe, suffer from pervasive anxiety, and usually fail to leave the relationship.^[56] Unless a shelter is available, she stays with her husband, not only because she typically lacks a means of self-support, but also because she fears that if she leaves she would be found and hurt even more.^[57]

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.

The defense fell short of proving all three phases of the cycle of violence supposedly characterizing the relationship of Ben and Marivic Genosa. No doubt there were acute battering incidents. In relating to the court *a quo* how the fatal incident that led to the death of Ben started, Marivic perfectly described the tension-building phase of the cycle. She was able to explain in adequate detail the typical characteristics of this stage. However, that single incident does not prove the existence of the syndrome. In other words, she failed to prove that in at least another battering episode in the past, she had gone through a similar pattern.

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

Neither did appellant proffer sufficient evidence in regard to the third phase of the cycle. She simply mentioned that she would usually run away to her mothers or fathers house,^[58] that Ben would seek her out, ask for her forgiveness and promise to change; and that believing his words, she would return to their common abode.

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?

In sum, the defense *failed to elicit from appellant herself her factual experiences and thoughts that would clearly and fully demonstrate the essential characteristics of the syndrome.*

The Court appreciates the ratiocinations given by the expert witnesses for the defense. Indeed, they were able to explain fully, albeit merely theoretically and scientifically, how the personality of the battered woman usually evolved or deteriorated as a result of repeated and severe beatings inflicted upon her by her partner or spouse. They corroborated each others testimonies, which were culled from their numerous studies of hundreds of actual cases. *However, they failed to present in court the factual experiences and thoughts that appellant had related to them -- if at all -- based on which they concluded that she had BWS.*

We emphasize that in criminal cases, all the elements of a modifying circumstance must be proven in order to be appreciated. To repeat, the records lack supporting evidence that would establish all the essentials of the battered woman syndrome as manifested specifically in the case

of the Genosas.

BWS as Self-Defense

In any event, the existence of the syndrome in a relationship does not in itself establish the legal right of the woman to kill her abusive partner. Evidence must still be considered in the context of self-defense. ^[59]

From the expert opinions discussed earlier, the Court reckons further that crucial to the BWS defense is the state of mind of the battered woman at the time of the offense ^[60] -- she must have actually feared imminent harm from her batterer and honestly believed in the need to kill him in order to save her life.

Settled in our jurisprudence, however, is the rule that the one who resorts to self-defense must face a *real threat* on ones life; and the peril sought to be avoided must be *imminent and actual*, not merely imaginary. ^[61] Thus, the Revised Penal Code provides the following requisites and effect of self-defense: ^[62]

Art. 11. *Justifying circumstances.* -- The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression;

Second. Reasonable necessity of the means employed to prevent or repel it;

Third. Lack of sufficient provocation on the part of the person defending himself.

Unlawful aggression is the most essential element of self-defense. ^[63] It presupposes actual, sudden and unexpected attack -- or an imminent danger thereof -- on the life or safety of a person. ^[64]

In the present case, however, according to the testimony of Marivic herself, there was a sufficient time interval between the unlawful aggression of Ben and her fatal attack upon him. She had already been able to withdraw from his violent behavior and escape to their childrens bedroom. During that time, he apparently ceased his attack and went to bed. The reality or even the imminence of the danger he posed had ended altogether. He was no longer in a position that presented an actual threat on her life or safety.

Had Ben still been awaiting Marivic when she came out of their childrens bedroom -- and based on past violent incidents, there was a great probability that he would still have pursued her and inflicted graver harm -- then, the imminence of the real threat upon her life would not have ceased yet. 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. To 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. ^[65] Still, impending danger (based on the conduct of the victim in previous battering episodes) prior to the defendants

use of deadly force must be shown. Threatening behavior or communication can satisfy the required imminence of danger.^[66] Considering such circumstances and the existence of BWS, self-defense may be appreciated.

We reiterate the principle that aggression, if not continuous, does not warrant self-defense.^[67] In the absence of such aggression, there can be no self-defense -- complete or incomplete -- on the part of the victim.^[68] Thus, Marivics killing of Ben was not completely justified under the circumstances.

Mitigating Circumstances Present

In any event, all is not lost for appellant. While she did not raise any other modifying circumstances that would alter her penalty, we deem it proper to evaluate and appreciate in her favor circumstances that mitigate her criminal liability. It is a hornbook doctrine that an appeal in a criminal case opens it wholly for review on any issue, including that which has not been raised by the parties.^[69]

From several psychological tests she had administered to Marivic, Dra. Dayan, in her Psychological Evaluation Report dated November 29, 2000, opined as follows:

This is a classic case of a Battered Woman Syndrome. The repeated battering Marivic experienced with her husband constitutes a form of [cumulative] provocation which broke down her psychological resistance and natural self-control. It is very clear that she developed heightened sensitivity to sight of impending danger her husband posed continuously. Marivic truly experienced at the hands of her abuser husband a state of psychological paralysis which can only be ended by an act of violence on her part.^[70]

Dr. Pajarillo corroborates the findings of Dra. Dayan. He explained that the effect of repetitious pain taking, repetitious battering, [and] repetitious maltreatment as well as the severity and the prolonged administration of the battering is posttraumatic stress disorder.^[71] Expounding thereon, he said:

Q What causes the trauma, Mr. Witness?

A What causes the trauma is probably the repetitious battering. Second, the severity of the battering. Third, the prolonged administration of battering or the prolonged commission of the battering and the psychological and constitutional stamina of the victim and another one is the public and social support available to the victim. If nobody is interceding, the more she will go to that disorder....

X X X X X X X X

Q You referred a while ago to severity. What are the qualifications in terms of severity of the posttraumatic stress disorder, Dr. Pajarillo?

A The severity is the most severe continuously to trig[g]er this post[t]raumatic stress disorder is

injury to the head, banging of the head like that. It is usually the very very severe stimulus that precipitate this post[t]raumatic stress disorder. Others are suffocating the victim like holding a pillow on the face, strangulating the individual, suffocating the individual, and boxing the individual. In this situation therefore, the victim is heightened to painful stimulus, like for example she is pregnant, she is very susceptible because the woman will not only protect herself, she is also to protect the fetus. So the anxiety is heightened to the end [sic] degree.

Q But in terms of the gravity of the disorder, Mr. Witness, how do you classify?

A We classify the disorder as [acute], or chronic or delayed or [a]typical.

Q Can you please describe this pre[-]classification you called delayed or [atypical]?

A The acute is the one that usually require only one battering and the individual will manifest now a severe emotional instability, higher irritability remorse, restlessness, and fear and probably in most [acute] cases the first thing will be happened to the individual will be thinking of suicide.

Q And in chronic cases, Mr. Witness?

A The chronic cases is this repetitious battering, repetitious maltreatment, any prolonged, it is longer than six (6) months. The [acute] is only the first day to six (6) months. After this six (6) months you become chronic. It is stated in the book specifically that after six (6) months is chronic. The [a]typical one is the repetitious battering but the individual who is abnormal and then become normal. This is how you get neurosis from neurotic personality of these cases of post[t]raumatic stress disorder. ^[72]

Answering the questions propounded by the trial judge, the expert witness clarified further:

Q But just the same[,] neurosis especially on battered woman syndrome x x x affects x x x his or her mental capacity?

A Yes, your Honor.

Q As you were saying[,] it x x x obfuscated her rationality?

A Of course obfuscated. ^[73]

In 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.

Based on the explanations of the expert witnesses, such manifestations were analogous to an illness that diminished the exercise by appellant of her will power without, however, depriving her of consciousness of her acts. There was, thus, a resulting diminution of her freedom of action, intelligence or intent. Pursuant to paragraphs 9^[74] and 10^[75] of Article 13 of the Revised Penal Code, this circumstance should be taken in her favor and considered as a mitigating factor. ^[76]

In addition, we also find in favor of appellant the extenuating circumstance of having acted upon an impulse so powerful as to have naturally produced passion and obfuscation. It has been held that this state of mind is present when a crime is committed as a result of an uncontrollable

burst of passion provoked by prior unjust or improper acts or by a legitimate stimulus so powerful as to overcome reason.^[77] To appreciate this circumstance, the following requisites should concur: (1) there is an act, both unlawful and sufficient to produce such a condition of mind; and (2) this act is not far removed from the commission of the crime by a considerable length of time, during which the accused might recover her normal equanimity.^[78]

Here, an acute battering incident, wherein Ben Genosa was the unlawful aggressor, preceded his being killed by Marivic. He had further threatened to kill her while dragging her by the neck towards a cabinet in which he had kept a gun. It should also be recalled that she was eight months pregnant at the time. The attempt on her life was likewise on that of her fetus.^[79] His abusive and violent acts, an aggression which was directed at the lives of both Marivic and her unborn child, naturally produced passion and obfuscation overcoming her reason. Even though she was able to retreat to a separate room, her emotional and mental state continued. According to her, she felt her blood pressure rise; she was filled with feelings of self-pity and of fear that she and her baby were about to die. In a fit of indignation, she pried open the cabinet drawer where Ben kept a gun, then she took the weapon and used it to shoot him.

The confluence of these events brings us to the conclusion that there was no considerable period of time within which Marivic could have recovered her normal equanimity. Helpful is Dr. Pajarillos testimony^[80] that with neurotic anxiety -- a psychological effect on a victim of overwhelming brutality [or] trauma -- the victim relives the beating or trauma as if it were real, although she is not actually being beaten at the time. She cannot control re-experiencing the whole thing, the most vicious and the trauma that she suffered. She thinks of nothing but the suffering. Such reliving which is beyond the control of a person under similar circumstances, must have been what Marivic experienced during the brief time interval and prevented her from recovering her normal equanimity. Accordingly, she should further be credited with the mitigating circumstance of passion and obfuscation.

It should be clarified that these two circumstances -- psychological paralysis as well as passion and obfuscation -- did not arise from the same set of facts.

On the one hand, the first circumstance arose from the cyclical nature and the severity of the battery inflicted by the batterer-spouse upon appellant. That is, the repeated beatings over a period of time resulted in her psychological paralysis, which was analogous to an illness diminishing the exercise of her will power without depriving her of consciousness of her acts.

The second circumstance, on the other hand, resulted from the violent aggression he had inflicted on her prior to the killing. That the incident occurred when she was eight months pregnant with their child was deemed by her as an attempt not only on her life, but likewise on that of their unborn child. Such perception naturally produced passion and obfuscation on her part.

Second Legal Issue: **Treachery**

There is treachery when one commits any of the crimes against persons by employing means, methods or forms in the execution thereof without risk to oneself arising from the defense that the

offended party might make. ^[81] In order to qualify an act as treacherous, the circumstances invoked must be proven as indubitably as the killing itself; they cannot be deduced from mere inferences, or conjectures, which have no place in the appreciation of evidence. ^[82] Because of the gravity of the resulting offense, treachery must be proved as conclusively as the killing itself. ^[83]

Ruling that treachery was present in the instant case, the trial court imposed the penalty of death upon appellant. It inferred this qualifying circumstances merely from the fact that the lifeless body of Ben had been found lying in bed with an open, depressed, circular fracture located at the back of his head. As to exactly how and when he had been fatally attacked, however, the prosecution failed to establish indubitably. Only the following testimony of appellant leads us to the events surrounding his death:

Q You said that when Ben came back to your house, he dragged you? How did he drag you?

COURT:

The witness demonstrated to the Court by using her right hand flexed forcibly in her front neck)

A And he dragged me towards the door backward.

ATTY. TABUCANON:

Q Where did he bring you?

A Outside the bedroom and he wanted to get something and then he kept on shouting at me that you might as well be killed so there will be nobody to nag me

Q So you said that he dragged you towards the drawer?

A Yes, sir.

Q What is there in the drawer?

A I was aware that it was a gun.

COURT INTERPRETER

(At this juncture the witness started crying)

ATTY. TABUCANON:

Q Were you actually brought to the drawer?

A Yes, sir.

Q What happened when you were brought to that drawer?

A He dragged me towards the drawer and he was about to open the drawer but he could not open it because he did not have the key then he pulled his wallet which contained a blade about 3 inches long and I was aware that he was going to kill me and I smashed his arm and then the wallet and the blade fell. The one he used to open the drawer I saw, it was a pipe about that long, and when he was about to pick-up the wallet and the blade, I smashed him then I ran to the other room, and on that very moment everything on my mind was to pity on myself, then the feeling I had on that very moment was the same when I was admitted in PHILPHOS Clinic, I was about to vomit.

COURT INTERPRETER

(The witness at this juncture is crying intensely).

X X X X X X X X

Q You said that he dropped the blade, for the record will you please describe this blade about 3 inches long, how does it look like?

A Three (3) inches long and inch wide.

Q It is a flexible blade?

A Its a cutter.

Q How do you describe the blade, is it sharp both edges?

A Yes, because he once used it to me.

Q How did he do it?

A He wanted to cut my throat.

Q With the same blade?

A Yes, sir, that was the object used when he intimidate me.

X X X X X X X X

ATTY. TABUCANON:

Q You said that this blade fell from his grip, is it correct?

A Yes, because I smashed him.

Q What happened?

A Ben tried to pick-up the wallet and the blade, I pick-up the pipe and I smashed him and I ran to the other room.

Q What else happened?

A When I was in the other room, I felt the same thing like what happened before when I was admitted in PHILPHOS Clinic, I was about to vomit. I know my blood pressure was raised. I was frightened I was about to die because of my blood pressure.

COURT INTERPRETER:

(Upon the answer of the witness getting the pipe and smashed him, the witness at the same time pointed at the back of her neck or the nape).

ATTY. TABUCANON:

Q You said you went to the room, what else happened?

A Considering all the physical sufferings that Ive been through with him, I took pity on myself and I felt I was about to die also because of my blood pressure and the baby, so I got that gun and I shot him.

COURT

/to Atty. Tabucanon

Q You shot him?

A Yes, I distorted the drawer. ^[84]

The above testimony is insufficient to establish the presence of treachery. There is no showing of the victims position relative to appellants at the time of the shooting. Besides, equally axiomatic is the rule that when a killing is preceded by an argument or a quarrel, treachery cannot be appreciated as a qualifying circumstance, because the deceased may be said to have been forewarned and to have anticipated aggression from the assailant. ^[85]

Moreover, in order to appreciate *alevosia*, the method of assault adopted by the aggressor must have been consciously and deliberately chosen for the specific purpose of accomplishing the unlawful act without risk from any defense that might be put up by the party attacked. ^[86] There is no showing, though, that the present appellant intentionally chose a specific means of successfully attacking her husband without any risk to herself from any retaliatory act that he might make. To the contrary, it appears that the thought of using the gun occurred to her only at about the same moment when she decided to kill her batterer-spouse. In the absence of any convincing proof that she consciously and deliberately employed the method by which she committed the crime in order to ensure its execution, this Court resolves the doubt in her favor. ^[87]

Proper Penalty

The penalty for parricide imposed by Article 246 of the Revised Penal Code is *reclusion perpetua* to death. Since two mitigating circumstances and no aggravating circumstance have been found to have attended the commission of the offense, the penalty shall be lowered by one (1) degree, pursuant to Article 64 of paragraph 5^[88] of the same Code. ^[89] The penalty of *reclusion temporal* in its medium period is imposable, considering that two mitigating circumstances are to be taken into account in reducing the penalty by one degree, and no other modifying circumstances were shown to have attended the commission of the offense. ^[90] Under the Indeterminate Sentence Law, the minimum of the penalty shall be within the range of that which is next lower in degree -- *prision mayor* -- and the maximum shall be within the range of the medium period of *reclusion temporal*.

Considering all the circumstances of the instant case, we deem it just and proper to impose the penalty of *prision mayor* in its minimum period, or six (6) years and one (1) day in prison as minimum; to *reclusion temporal* in its medium period, or 14 years 8 months and 1 day as maximum. Noting that appellant has already served the minimum period, she may now apply for and be released from detention on parole. ^[91]

Epilogue

Being a novel concept in our jurisprudence, the battered woman syndrome was neither easy nor simple to analyze and recognize vis--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. And definitely, the solicitor general and appellants counsel, Atty. Katrina Legarda, have helped it in such learning process.

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.

The Court, however, is not discounting the possibility of self-defense arising from the battered woman syndrome. We now sum up our main points. *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 persons 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. Taken altogether, these circumstances could satisfy the requisites of self-defense. Under the existing facts of the present case, however, not all of these elements were duly established.

WHEREFORE, the conviction of Appellant Marivic Genosa for parricide is hereby *AFFIRMED*. However, there being two (2) mitigating circumstances and no aggravating circumstance attending her commission of the offense, her penalty is *REDUCED* to six (6) years and one (1) day of *prision mayor* as minimum; to 14 years, 8 months and 1 day of *reclusion temporal* as maximum.

Inasmuch as appellant has been detained for more than the minimum penalty hereby imposed upon her, the director of the Bureau of Corrections may immediately *RELEASE* her from custody upon due determination that she is eligible for parole, unless she is being held for some other lawful cause. *Costs de officio*.

SO ORDERED.

Puno, Carpio, Corona, Carpio-Morales, Callejo, Sr., Azcuna and Tinga, JJ., concur.

Davide, Jr., C.J., Sandoval-Gutierrez, and Austria-Martinez, JJ., join Justice Santiago in her dissent.

Vitug and Quisumbing JJ., in the result.

Ynares-Santiago J., see dissenting opinion.

[1] Penned by Judge Fortunito L. Madrona.

[2] Assailed Decision, p. 17; *rollo*, p. 43.

[3] Signed by Provincial Prosecutor I Rosario D. Beleta.

- [4] *Rollo*, p. 9.
- [5] Atty. Joventino Isidro. The accused was also represented later by Atty. Gil Marvel P. Tabucanon.
- [6] Records, p. 65.
- [7] Appellees Brief, pp. 5-13; *rollo*, pp. 435-443. Signed by Solicitor General Alfredo L. Benipayo, Assistant Solicitor General Karl B. Miranda, and Solicitor Ma. Ana C. Rivera.
- [8] Spelled as Basobas in some parts of the record.
- [9] Appellants Brief, pp. 10-71; *rollo*, pp. 284-345; signed by Atty. Katrina Legarda. Citations omitted.
- [10] Qualifying her expertise, Dra. Dayan stated that she had been a practising clinical psychologist for over twenty (20) years. Currently, she is a professor at the De La Salle University. Prior thereto, she was the head of the Psychology Department of the Assumption College; a member of the faculty of Psychology of the Ateneo de Manila University and St. Josephs College; and the counseling psychologist of the National Defense College. She obtained her bachelors degree in psychology from the University of the Philippines (UP), her Master of Arts in Clinical Counseling from Ateneo, and her Ph.D. also from UP. She is the secretary of the International Council of Psychologists, comprised of members from about 68 countries; and was the past president of the Psychological Association of the Philippines. She is a member of the Forensic Psychology Association, the American Psychological Association, and the ASEAN Counseling Association. She authored the book entitled *Energy Global Psychology* (together with Drs. Allen Tan and Allan Bernardo). Dra. Dayan also lectures at the Philippine Judicial Academy, recently on the socio-demographic and psychological profiles of families involved in domestic violence cases. On the subject, she had conducted, for over a period of ten years, research on the profiles of about 500 families involved in domestic violence.
- [11] Dr. Pajarillo obtained his medical degree from the University of Santo Tomas and has been in the practice of psychiatry for thirty-eight years. He honed his practice in psychiatry and neurology during his stint with the Veterans Memorial Medical Centre. Thereafter, he was called to active duty in the Armed Forces of the Philippines and was assigned at the V. Luna Medical Center for twenty-six years. He was a diplomate of the Philippine Board of Psychiatry; and a fellow of the Philippine Board of Psychiatry and the Philippine Psychiatry Association. He was also a member of the World Association of Military Surgeons; the Quezon City Medical Society; the Cagayan Medical Society; and the Philippine Association of Military Surgeons. He authored *The Comparative Analysis of Nervous Breakdown in the Philippine Military Academy from the Period 1954-1978*, which was presented twice in international congresses. He also authored *The Mental Health of the Armed Forces of the Philippines 2000*, which was likewise published internationally and locally. On a Parke-Davis grant, he published a medical textbook on the use of Prasepam; on an ER Squibb grant, he was the first to use Enanthate (siquiline); and he published the use of the drug Zopiclom in 1985-86. Prior to his retirement from government service, he obtained the rank of Brigadier General. (TSN, February 9, 2001, pp. 6-9; Exhibits F-F-9-Appellant (Bio-Data of Dr. Pajarillo).
- [12] This case was deemed submitted for resolution on April 4, 2003, upon receipt by this Court of appellees Brief. Appellants Brief was filed on December 2, 2002.
- [13] Appellants Brief, *rollo*, pp. 346-347. Original in upper case.
- [14] *Caca v. Court of Appeals and People*, 341 Phil. 114, July 7, 1997; *People v. Paragua*, 326 Phil. 923, May 24, 1996; *People v. Tanoy*, 387 Phil. 750, May 12, 2000; *People v. Magaro*, 353 Phil. 862, July 2, 1998.
- [15] 15 of Art. VIII of the Constitution provides:
- Sec. 15. (1) All cases or matters filed after the effectivity of this Constitution must be decided or resolved within x x x three months for all other lower courts.

(2) A case or matter shall be deemed submitted for decision or resolution upon the filing of the last pleading, brief, or memorandum required by the Rules of Court or by the court itself.

- [16] 333 Phil. 20, December 2, 1996, per Puno, *J.*
- [17] TSN, September 23, 1997, pp. 11-12 & 14; TSN, November 12, 1997, pp. 29 & 33.
- [18] TSN, August 6, 1998, pp. 7-8.
- [19] *People v. Sarabia*, 376 Phil. 32, October 29, 1999.
- [20] Appellees Brief, p. 26, citing *People v. De los Reyes*, 229 SCRA 439, January 21, 1994. See also 5 of Rule 110 of the New Rules of Criminal Procedure and *People v. Vergara*, 221 SCRA 560, April 28, 1993.
- [21] [People v. Rabanal](#), 349 SCRA 655, January 19, 2001; *People v. Cario*, 351 Phil. 644, March 31, 1998; *People v. Baniel*, 341 Phil. 471, July 15, 1997.
- [22] [People v. Peralta](#), 350 SCRA 198, January 24, 2001.
- [23] See *Ibn-Tamas v. US*, 477 A.2d 626, 1979 DC App. LEXIS 457; *McLuckie v. Abbott*, 337 F.3d 1193; 2003 US App. LEXIS 15240; *DePetris v. Kuykendall*, 239 F.3d 1057; 2001 US App. LEXIS 1062; *State v. Kelley*, 478 A.2d 364 (1984); *McMaugh v. State*, 612 A.2d 725 (RI 1992); *State v. Frost*, 577 A.2d 1282 (NJ Super. Ct. App. Div. 1990); *State v. Gallegos*, 719 P.2d 1268 (NM Ct. App. 1986); *R. v. Lavallee* (1990) 1 SCR; *Reilly v. The Queen*, (1984) 2 SCR 396.
- [24] Symposium on Domestic Violence. Article: Providing Legal Protection for Battered Women: An Analysis of State Statutes and Case Law, LEXSEE 21 Hofstra L. Rev. 801 (Summer 1993), 1161.
- [25] *McMaugh v. State*, 612 A.2d 725, 731, quoting L. Walker, *The Battered Woman*, at XV (1979).
- [26] *People v. Torres*, 128 Misc2d, 129, 488 NYS2d 358; *McMaugh v. State*, 612 A.2d 725.
- [27] Walker, Lenore, *The Battered Woman Syndrome* (1984), pp. 95-96. Dr. Walker, a clinical psychologist, is an acknowledged expert on BWS in the United States. She is a pioneer researcher in the field. In this book, she reports the results of her study involving 400 battered women. Her research was designed to test empirically the theories expounded in her earlier book, *The Battered Woman* (1979). In 1989, she also wrote *Terrifying Love: Why Battered Women Kill and How Society Responds*.
- [28] Walker, *Terrifying Love: Why Battered Women Kill and How Society Responds* (Harper Perennial, 1989), p. 42.
- [29] *Ibid.* See also *R. v. Lavallee*, *supra*; *Ibn-Tamas v. US*, *supra*.
- [30] *Ibid.*
- [31] *Ibid.*
- [32] TSN, August 6, 1998, pp. 12-19.
- [33] Exhibits 1 & 1-A; records, p. 44.
- [34] TSN, August 5, 1998, pp. 14-23, 27-31.

- [35] TSN, December 16, 1997, pp. 15-17 & 20-21.
- [36] TSN, May 22, 1998, pp. 2-20.
- [37] TSN (Arturo Basobas), July 21, 1997, pp. 13, 15 & 21; TSN (Jose Barrientos), December 15, 1997, pp. 17-20; TSN (Junnie Barrientos), December 15, 1997, pp. 35-37; TSN (Ecel Arano), May 22, 1998, pp. 10 & 20.
- [38] TSN, August 6, 1998, pp. 19-32.
- [39] TSN, January 15, 2001, pp. 37-38.
- [40] *Id.*, pp. 51-53.
- [41] *Id.*, p. 36.
- [42] Exhibits G-G-3 - Appellant.
- [43] *Ibid.*
- [44] In *R. v. Lavallee, supra*.
- [45] *Ibid.*
- [46] Fiona E. Raitt and M. Suzanne Zeedyk, *The Implicit Relation of Psychology and Law: Women and Syndrome Evidence*, pp. 66-67 (Exh. D).
- [47] Walker, *Terrifying Love*, p. 47.
- [48] TSN, January 15, 2001, p. 18.
- [49] *Id.*, p. 20.
- [50] TSN, February 9, 2001, pp. 11-13.
- [51] *Id.*, p. 14.
- [52] Walker, *Terrifying Love*, p. 48.
- [53] *Id.*, pp. 49-50.
- [54] *Ibid.*
- [55] Dr. Lenore Walkers testimony before the court in *Ibn-Tamas, supra*.
- [56] Psychologist Nancy Kaser-Boyd testifying as an expert on the battered woman syndrome in *Depetris, supra*.
- [57] Dr. Lenore Walkers testimony before the court in *Ibn-Tamas, supra*.
- [58] Her biological parents lived separately.

- [59] State v. Kelly, 655 P.2d 1202, 1203 (1982).
- [60] The case would rise or fall on whether . . . [appellant] acted in actual fear of imminent harm from her husband when she shot [or injured] him . . . Depetris v. Kuykendall, *supra*. See also People v. Torres, 128 Misc2d 129, 488 NYS.2d 358.
- [61] People v. PO3 Langres, 375 Phil. 240, 258, October 13, 1999.
- [62] See also [People v. Plazo](#), 350 SCRA 433, January 29, 2001; People v. Cario, 351 Phil. 644, March 31, 1998; People v. Timblor, 348 Phil. 847, January 27, 1998.
- [63] [People v. Saul](#), 372 SCRA 636, December 19, 2001.
- [64] People v. Galapin, 355 Phil. 212, July 31, 1998; People v. Panes, 343 Phil. 878, August 29, 1997.
- [65] State v. Gallegos, 104 NM 247, 719 P.2d 1268, citing Eber, The Battered Wives Dilemma: To Kill or To Be Killed, 32 Hasting LJ 895, 928 (1981).
- [66] *Id.*, citing State v. Walker, 40 Wash.App. 658, 700 P.2d 1168 (1985).
- [67] People v. Saul, *supra*.
- [68] [People v. Bato](#), 348 SCRA 253, December 15, 2000.
- [69] People v. Maquiling, 368 Phil. 169, June 21, 1999; [People v. Discalsota, GR No. 136892](#), April 11, 2002.
- [70] Exhibits B et seq. - Appellant, p. 10.
- [71] TSN, February 9, 2001, p. 19.
- [72] *Id.*, pp. 15-17.
- [73] *Id.*, p. 54.
- [74] Art. 13. *Mitigating Circumstances*. The following are mitigating circumstances:

X X X X X X X X

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.
- [75] 10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.
- [76] See People v. Javier, 370 Phil. 596, July 28, 1999; People v. Amit, 82 Phil. 820, February 15, 1949; People v. Francisco, 78 Phil. 694, July 16, 1947; People v. Balneg, 79 Phil. 805, January 9, 1948.
- [77] People v. Lobino, 375 Phil. 1065, October 28, 1999; People v. Valles, 334 Phil. 763, January 28, 1997.
- [78] I Reyes, *The Revised Penal Code*, p. 272 (1998).

[79] According to Dr. Lenore Walker, batterers commonly escalate their abusiveness when their wives are pregnant.

[80] *Id.*, pp. 17-18.

[81] *People v. Cabande*, 381 Phil. 889, February 8, 2000.

[82] *People v. Llanes*, 381 Phil. 733, February 4, 2000.

[83] *People v. Albao*, 383 Phil. 873, March 2, 2000; *People v. Aguilar*, 354 Phil. 360, July 10, 1998.

[84] TSN, August 6, 1998, pp. 26-32.

[85] *People v. Buluran*, 382 Phil. 364, February 15, 2000; *People v. Ereo*, 383 Phil. 30, February 22, 2000.

[86] *People v. Caete*, 44 Phil. 478, February 5, 1923; *People v. Narvaez*, 206 Phil. 314, April 20, 1983.

[87] *People v. Aguilar*, *supra*.

[88] Art. 64. Rules for the application of penalties which contain three periods.

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5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.

x x x x x x x x

[89] *People v. Narvaez*, 206 Phil. 314, April 20, 1983; *Guevarra v. Court of Appeals*, 187 SCRA 484, July 16, 1990.

[90] *Basan v. People*, 61 SCRA 275, November 29, 1974.

[91] 5, Indeterminate Sentence Law (Act 4103, as amended).