Republic of the Philippines
Supreme Court
Manila

SECOND DIVISION

PEOPLE OF THE PHILIPPINES, Plaintiff-appellee,	**G.R. No. 207950**
	Present:
-versus-	CARPIO, *J., Chairperson,* BRION, DEL CASTILLO, MENDOZA, and LEONEN, *JJ.*
MARK JASON CHAVEZ y BITANCOR alias "NOY", Accused-appellant.	**Promulgated:** SEP 22 2014

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DECISION

LEONEN, *J.*:

Every conviction for any crime must be accompanied by the required moral certainty that the accused has committed the offense charged beyond reasonable doubt. The prosecution must prove "the offender's *intent* to take personal property *before* the killing, regardless of the time when the homicide [was] actually carried out"[1] in order to convict for the crime of robbery with homicide. The accused may nevertheless be convicted of the separate crime of homicide once the prosecution establishes beyond reasonable doubt the accused's culpability for the victim's death.

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[1] 358 Phil. 527, 537 (1998) [Per J. Quisumbing, First Division].

In the information dated November 8, 2006, Mark Jason Chavez y Bitancor (Chavez) was charged with the crime of robbery with homicide:

> That on or about October 28, 2006, in the City of Manila, Philippines, the said accused, did then and there wilfully, unlawfully and feloniously, with intent of gain and means of force, violence and intimidation upon the person of ELMER DUQUE y OROS, by then and there, with intent to kill, stabbing the latter repeatedly with a kitchen knife, thereby inflicting upon him mortal stab wounds which were the direct and immediate cause of his death thereafter, and on the said occasion or by reason thereof, accused took, robbed and carried away the following:
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> One (1) Unit Nokia Cellphone
> One (1) Unit Motorola Cellphone
> Six (6) pcs. Ladies Ring
> Two (2) pcs. Necklace
> One (1) pc. Bracelet
>
> All of undetermined value and undetermined amount of money, all belonging to said ELMER DUQUE y OROS @ BARBIE to the damage and prejudice of the said owner/or his heirs, in the said undetermined amount in Philippines currency.
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> Contrary to law.[2]

Chavez pleaded not guilty during his arraignment on December 4, 2006. The court proceeded to trial. The prosecution presented Angelo Peñamante (Peñamante), P/Chief Inspector Sonia Cayrel (PCI Cayrel), SPO3 Steve Casimiro (SPO3 Casimiro), Dr. Romeo T. Salen (Dr. Salen), and Raymund Senofa as witnesses. On the other hand, the defense presented Chavez as its sole witness.[3]

The facts as found by the lower court are as follows.

On October 28, 2006, Peñamante arrived home at around 2:45 a.m., coming from work as a janitor in Eastwood City.[4] When he was about to go inside his house at 1326 Tuazon Street, Sampaloc, Manila, he saw a person wearing a black, long-sleeved shirt and black pants and holding something while leaving the house/parlor of Elmer Duque (Barbie) at 1325 Tuazon Street, Sampaloc, Manila, just six meters across Peñamante's house.[5]

There was a light at the left side of the house/parlor of Barbie, his

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2 *Rollo*, pp. 3 and 31.
3 CA *rollo*, p. 32.
4 *Rollo*, p. 4; CA *rollo*, p. 33.
5 Id.

favorite haircutter, so Peñamante stated that he was able to see the face of Chavez and the clothes he was wearing.[6]

Chavez could not close the door of Barbie's house/parlor so he simply walked away. However, he dropped something that he was holding and fell down when he stepped on it.[7] He walked away after, and Peñamante was not able to determine what Chavez was holding.[8] Peñamante then entered his house and went to bed.[9]

Sometime after 10:00 a.m., the Scene of the Crime Office (SOCO) team arrived, led by PCI Cayrel. She was joined by PO3 Rex Maglansi (photographer), PO1 Joel Pelayo (sketcher), and a fingerprint technician.[10] They conducted an initial survey of the crime scene after coordinating with SPO3 Casimiro of the Manila Police District Homicide Section.[11]

The team noted that the lobby and the parlor were in disarray, and they found Barbie's dead body inside.[12] They took photographs and collected fingerprints and other pieces of evidence such as the 155 pieces of hair strands found clutched in Barbie's left hand.[13] They documented the evidence then turned them over to the Western Police District Chemistry Division. Dr. Salen was called to conduct an autopsy on the body.[14]

At around 11:00 a.m., Peñamante's landlady woke him up and told him that Barbie was found dead at 9:00 a.m. He then informed his landlady that he saw Chavez leaving Barbie's house at 2:45 a.m.[15]

At around 1:00 p.m., Dr. Salen conducted an autopsy on the body and found that the time of death was approximately 12 hours prior to examination.[16] There were 22 injuries on Barbie's body — 21 were stab wounds in various parts of the body caused by a sharp bladed instrument, and one incised wound was caused by a sharp object.[17] Four (4) of the stab wounds were considered fatal.[18]

The next day, the police invited Peñamante to the Manila Police

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6 CA *rollo*, p. 33.
7 *Rollo*, p. 4; CA *rollo*, p. 33.
8 Id.
9 CA *rollo*, p. 33.
10 *Rollo*, p. 4.
11 Id.
12 Id.
13 Id.
14 Id.
15 *Rollo*, p. 5; CA *rollo*, p. 33.
16 *Rollo*, p. 5.
17 Id.
18 Id.

Station to give a statement. Peñamante described to SPO3 Casimiro the physical appearance of the person he saw leaving Barbie's parlor.[19]

Accompanied by his mother, Chavez voluntarily surrendered on November 5, 2006 to SPO3 Casimiro at the police station.[20] Chavez was then 22 years old.[21] His mother told the police that she wanted to help her son who might be involved in Barbie's death.[22]

SPO3 Casimiro informed them of the consequences in executing a written statement without the assistance of a lawyer. However, Chavez's mother still gave her statement, subscribed by Administrative Officer Alex Francisco.[23] She also surrendered two cellular phones owned by Barbie and a baseball cap owned by Chavez.[24]

The next day, Peñamante was again summoned by SPO3 Casimiro to identify from a line-up the person he saw leaving Barbie's house/parlor that early morning of October 28, 2006.[25] Peñamante immediately pointed to and identified Chavez and thereafter executed his written statement.[26] There were no issues raised in relation to the line-up.

On the other hand, Chavez explained that he was at home on October 27, 2006, exchanging text messages with Barbie on whether they could talk regarding their misunderstanding.[27] According to Chavez, Barbie suspected that he was having a relationship with Barbie's boyfriend, Maki.[28] When Barbie did not reply to his text message, Chavez decided to go to Barbie's house at around 1:00 a.m. of October 28, 2006.[29] Barbie allowed him to enter the house, and he went home after.[30]

On August 19, 2011, the trial court[31] found Chavez guilty beyond reasonable doubt of the crime of robbery with homicide:

> WHEREFORE, in view of the foregoing, this Court finds accused MARK JASON CHAVEZ y BITANCOR @ NOY GUILTY beyond reasonable doubt of the crime of **Robbery with Homicide** and hereby sentences him to suffer the penalty of reclusion perpetua without

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19 *Rollo,* p. 6; CA *rollo*, p. 33.
20 *Rollo,* p. 5. CA *rollo*, pp. 33–34.
21 RTC records, p. 4.
22 *Rollo,* p. 6; CA *rollo*, p. 34.
23 Id.
24 *Rollo,* p. 7; CA *rollo*, p. 34.
25 Id.
26 Id.
27 *Rollo,* p. 9; CA *rollo*, p. 34.
28 Id.
29 Id.
30 Id.
31 CA *rollo,* pp. 31–48. The decision was penned by Presiding Judge Hon. Rosalyn D. Mislos-Loja of the Regional Trial Court Branch 41, Manila.

eligibility for parole.

Further, he is ordered to pay to the heirs of the victim, Elmer Duque y Oros the sum of ₱75,000.00 as death indemnity and another ₱75,000 for moral damages.

SO ORDERED.[32]

On February 27, 2013, the Court of Appeals[33] affirmed the trial court's decision.[34] Chavez then filed a notice of appeal pursuant to Rule 124, Section 13(c) of the Revised Rules of Criminal Procedure, as amended, elevating the case with this court.[35]

This court notified the parties to simultaneously submit supplemental briefs if they so desire. Both parties filed manifestations that they would merely adopt their briefs before the Court of Appeals.[36]

In his brief, Chavez raised presumption of innocence, considering that the trial court "overlooked and misapplied some facts of substance that could have altered its verdict."[37] He argued that since the prosecution relied on purely circumstantial evidence, conviction must rest on a moral certainty of guilt on the part of Chavez.[38] In this case, even if Peñamante saw him leaving Barbie's house, Peñamante did not specify whether Chavez was acting suspiciously at that time.[39]

As regards his mother's statement, Chavez argued its inadmissibility as evidence since his mother was not presented before the court to give the defense an opportunity for cross-examination.[40] He added that affidavits are generally rejected as hearsay unless the affiant appears before the court and testifies on it.[41]

Chavez argued that based on Dr. Salen's findings, Barbie's wounds were caused by two sharp bladed instruments, thus, it was possible that there were two assailants.[42] It was also possible that the assailants committed the crime after Chavez had left Barbie's house.[43] Given that many possible explanations fit the facts, that which is consistent with the

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32 Id. at 47–48.
33 Id. at 2–14. Court of Appeals Eighth (8th) Division, penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla.
34 *Rollo*, p. 13.
35 Id. at 15.
36 Id. at 24 and 27.
37 CA *rollo*, p. 71.
38 Id.
39 Id.
40 Id. at 72.
41 Id.
42 Id. at 72–73.
43 Id. at 73.

innocence of Chavez should be favored.[44]

On the other hand, plaintiff-appellee argued that direct evidence is not indispensable when the prosecution is establishing guilt beyond reasonable doubt of Chavez.[45] The circumstantial evidence presented before the trial court laid down an unbroken chain of events leading to no other conclusion than Chavez's acts of killing and robbing Barbie.[46]

On the argument made by Chavez that his mother's statement was inadmissible as hearsay, plaintiff-appellee explained that the trial court did not rely on, and did not even refer to, any of the statements made by Chavez's mother.[47]

Finally, insofar as Chavez's submission that Dr. Salen testified on the possibility that there were two assailants, Dr. Salen equally testified on the possibility that there was only one.[48]

The sole issue now before us is whether Chavez is guilty beyond reasonable doubt of the crime of robbery with homicide.

We reverse the decisions of the lower courts, but find Chavez guilty of the crime of homicide.

I

Chavez was found guilty of the special complex crime of robbery with homicide under the Revised Penal Code:

> Art. 294. Robbery with violence against or intimidation of persons – Penalties. – Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:
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> 1) The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed. . . .[49]

Chavez invokes his constitutional right to be presumed innocent, especially since the prosecution's evidence is purely circumstantial and a

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44 Id.
45 Id. at 115, *citing People v. Labagala,* G.R. No. 184603, August 2, 2010, 626 SCRA 267 [Per J. Perez, First Division].
46 Id. at 115–116.
47 Id. at 116–117.
48 Id. at 117–118.
49 REV. PEN. CODE, art. 294.

conviction must stand on a moral certainty of guilt.[50]

The Rules of Court expressly provides that circumstantial evidence may be sufficient to establish guilt beyond reasonable doubt for the conviction of an accused:

> SEC. 4. *Circumstantial evidence, when sufficient*. – Circumstantial evidence is sufficient for conviction if:
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> (a) There is more than one circumstance;
> (b) The facts from which the inferences are derived are proven; and
> (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[51]

The lower courts found that the circumstantial evidence laid down by the prosecution led to no other conclusion than the commission by Chavez of the crime charged:

> In the instant case, while there is no direct evidence showing that the accused robbed and fatally stabbed the victim to death, nonetheless, the Court believes that the following circumstances form a solid and unbroken chain of events that leads to the conclusion, beyond reasonable doubt, that accused Mark Jason Chavez y Bitancor @ Noy committed the crime charged, vi[z]: first, it has been duly established, as the accused himself admits, that he went to the parlor of the victim at around 1:00 o'clock in the morning of 28 October 2006 and the accused was allowed by the victim to get inside his parlor as it serves as his residence too; second, the victim's two (2) units of cellular phones (one red Nokia with model 3310 and the other one is a black Motorola) without sim cards and batteries, which were declared as part of the missing personal belongings of the victim, were handled to SPO3 Steve Casimiro by the mother of the accused, Anjanette C. Tobias on 05 November 2006 when the accused voluntarily surrendered, accompanied by his mother, at the police station: third, on 28 October 2006 at about 2:45 o'clock in the morning, witness Angelo Peñamante, who arrived from his work, saw a person holding and/or carrying something and about to get out of the door of the house of the victim located at 1325 G. Tuazon Street, Sampaloc, Manila, and trying to close the door but the said person was not able to successfully do so. He later positively identified the said person at the police station as MARK JASON CHAVEZ y BITANCOR @ NOY, the accused herein; and finally, the time when the accused decided on 27 October 2006 to patch up things with the victim and the circumstances (Dr. Salen's testimony that the body of the victim was dead for more or less twelve (12) hours) when the latter was discovered fatally killed on 28 October 2006 is not a co-incidence.
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> The prosecution has equally established, based on the same

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50 CA *rollo*, p. 71.

51 RULES OF COURT, Rule 133, sec. 4. *See People v. Lamsen et al.,* G.R. No. 198338, February 20, 2013, 691 SCRA 498, 507 [Per J. Perlas-Bernabe, Second Division].

circumstantial evidence, that the accused had indeed killed the victim.[52]

Factual findings by the trial court on its appreciation of evidence presented by the parties, and even its conclusions derived from the findings, are generally given great respect and conclusive effect by this court, more so when these factual findings are affirmed by the Court of Appeals.[53]

Nevertheless, this court has held that "[w]hat is imperative and essential for a conviction for the crime of robbery with homicide is for the prosecution to establish the offender's *intent* to take personal property *before* the killing, regardless of the time when the homicide is actually carried out."[54] In cases when the prosecution failed to conclusively prove that homicide was committed for the purpose of robbing the victim, no accused can be convicted of robbery with homicide.[55]

The circumstantial evidence relied on by the lower courts, as quoted previously, do not satisfactorily establish an original criminal design by Chavez to commit robbery.

At most, the intent to take personal property was mentioned by Chavez's mother in her statement as follows:

> Na si Noy na aking anak ay nagtapat sa akin tungkol sa kanyang kinalaman sa pagkamatay ni Barbie at kasabay ang pagbigay sa akin ng dalawang (2) piraso ng cellular phones na pag/aari [sic] ni Barbie na kanyang kinuha pagka/tapos [sic] ng insidente.
>
> Na ipinagtapat din sa akin ni Noy na ang ginamit na panaksak na isang kutsilyo na gamit namin sa bahay ay inihulog niya sa manhole sa tapat ng aming bahay matapos ang insidente.
>
> At ang isang piraso ng kwintas na kinuha rin nya mula kay Barbie ay naisanla niya sa isang sanglaan sa Quezon City.
>
> Na ang suot niyang tsinelas ay nag/iwan [sic] ng bakas sa pinangyarihan ng insidente. At sya rin ang nakasugat sa kanyang sariling kamay ng [sic] maganap ang insidente.
>
> ***Na sinabi niya sa akin na wala siyang intensyon na patayin [sic] si Barbie kundi ay pagnakawan lamang***.[56] (Emphasis supplied)

However, this statement is considered as hearsay, with no evidentiary

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52 *Rollo,* p. 12; CA *rollo,* pp. 45–46.
53 *People v. Musa,* 609 Phil. 396, 410 (2009) [Per J. Brion, Second Division].
54 *People v. Sanchez,* 358 Phil. 527, 537 (1998) [Per J. Quisumbing, First Division].
55 Id. at 538, *citing People v. Salazar,* 342 Phil. 745, 765 (1997) [Per J. Panganiban, Third Division], *citing U.S. v. Baguiao,* 4 Phil. 110, 112 (1905) [Per J. Torres, En Banc].
56 *Rollo*, pp. 6–7.

value, since Chavez's mother was never presented as a witness during trial to testify on her statement.[57]

An original criminal design to take personal property is also inconsistent with the infliction of no less than 21 stab wounds in various parts of Barbie's body.[58]

The number of stab wounds inflicted on a victim has been used by this court in its determination of the nature and circumstances of the crime committed.

This may show an intention to ensure the death of the victim. In a case where the victim sustained a total of 36 stab wounds in his front and back, this court noted that "this number of stab wounds inflicted on the victim is a strong indication that appellants made sure of the success of their effort to kill the victim without risk to themselves."[59]

This court has also looked into the number and gravity of the wounds sustained by the victim as indicative of the accused's intention to kill the victim and not merely to defend himself or others.[60]

In the special complex crime of robbery with homicide, homicide is committed in order "(a) to facilitate the robbery or the escape of the culprit; (b) to preserve the possession by the culprit of the loot; (c) to prevent discovery of the commission of the robbery; or (d) to eliminate witnesses to the commission of the crime."[61] 21 stab wounds would be overkill for these purposes.

The sheer number of stab wounds inflicted on Barbie makes it difficult to conclude an original criminal intent of merely taking Barbie's personal property.

In *People v. Sanchez*,[62] this court found accused-appellant liable for

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57 *People v. Sorrel,* 343 Phil. 890, 898 (1997) [Per J. Vitug, First Division], *citing Osias v. Court of Appeals*, 326 Phil. 107 (1996) [Per J. Hermosisima, Jr., En Banc], *citing People v. Santos*, 224 Phil. 129 (1985) [Per J. Escolin, En Banc]; *People v. Lavarias*, 132 Phil. 766 (1968) [Per J. Fernando, En Banc]; *People v. Carlos*, 47 Phil. 626 (1925) [Per J. Ostrand, En Banc].

58 *Rollo*, p. 5.

59 *People v. Paragua,* 326 Phil. 923, 930 (1996) [Per J. Hermosisima, Jr., First Division].

60 *See People v. Ramos,* G.R. No. 190340, July 24, 2013, 702 SCRA 204, 216 [Per J. Del Castillo, Second Division], *citing People v. Pateo*, G.R. No. 156786, June 3, 2004, 430 SCRA 609, 617 [Per J. Ynares-Santiago, First Division]; *People v. Bracia,* G.R. No. 174477, October 2, 2009, 602 SCRA 351, 370–371 [Per. J. Brion, Second Division]; *Casitas v. People,* 466 Phil. 861, 870 (2004) [Per J. Callejo, Sr., Second Division].

61 *People v. Quemeggen,* 611 Phil. 487 (2009) [Per J. Nachura, Third Division]. This was cited in the prosecution's memorandum with the trial court, RTC records, p. 348.

62 358 Phil. 527 (1998) [Per J. Quisumbing, First Division].

the separate crimes of homicide and theft for failure of the prosecution to conclusively prove that homicide was committed for the purpose of robbing the victim:

> But from the record of this case, we find that the prosecution palpably failed to substantiate its allegations of the presence of criminal design to commit robbery, independent of the intent to commit homicide. There is no evidence showing that the death of the victim occurred by reason or on the occasion of the robbery. The prosecution was silent on accused-appellant's primary criminal intent. Did he intend to kill the victim in order to steal the cash and the necklace? Or did he intend only to kill the victim, the taking of the latter's personal property being merely an afterthought? Where the homicide is not conclusively shown to have been committed for the purpose of robbing the victim, or where the robbery was not proven at all, there can be no conviction for *robo con homicidio.*[63]

II

This court finds that the prosecution proved beyond reasonable doubt the guilt of Chavez for the separate crime of homicide.

First, the alibi of Chavez still places him at the scene of the crime that early morning of October 28, 2006.

The victim, Elmer Duque, went by the nickname, Barbie, and he had a boyfriend named Maki. Nevertheless, Chavez described his friendship with Barbie to be "[w]e're like brothers."[64] He testified during cross-examination that he was a frequent visitor at Barbie's parlor that he cannot recall how many times he had been there.[65] This speaks of a close relationship between Chavez and Barbie.

Chavez testified that he went to Barbie's house at 1:00 in the morning of October 28, 2006 to settle his misunderstanding with Barbie who suspected him of having a relationship with Barbie's boyfriend:

> MARK JASON CHAVEZ was a friend to the victim, Barbie, for almost three (3) years and the two (2) treated each other like brothers. The latter, however, suspected Mark Jason of having a relationship with Maki Añover, Barbie's boyfriend for six (6) months, which resulted in a misunderstanding between them. Mark Jason tried to patch things up with Barbie so thru a text message he sent on the evening of 27 October 2006, he asked if they could talk. When Barbie did not reply, he decided to visit him at his parlor at

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63 Id. at 538.
64 TSN, February 14, 2011, p. 6.
65 TSN, March 7, 2011, p. 9.

> around 1:00 o'clock in the morning. Barbie let him in and they tried to talk about the situation between them. Their rift, however, was not fixed so he decided to go home. Later on, he learned that Barbie was already dead.[66]

This court has considered motive as one of the factors in determining the presence of an intent to kill,[67] and a confrontation with the victim immediately prior to the victim's death has been considered as circumstantial evidence for homicide.[68]

Second, the number of stab wounds inflicted on Barbie strengthens an intention to kill and ensures his death. The prosecution proved that there was a total of 22 stab wounds found in different parts of Barbie's body and that a kitchen knife was found in a manhole near Chavez's house at No. 536, 5th Street, San Beda, San Miguel, Manila.[69]

The Court of Appeals' recitation of facts quoted the statement of Chavez's mother. This provides, among others, her son's confession for stabbing Barbie and throwing the knife used in a manhole near their house:

> Na si Noy na aking anak ay nagtapat sa akin tungkol sa kanyang kinalaman sa pagkamatay ni Barbie at kasabay ang pagbigay sa akin ng dalawang (2) piraso ng cellular phones na pag/aari [sic] ni Barbie na kanyang kinuha pagka/tapos [sic] ng insidente.
>
> *Na ipinagtapat din sa akin ni Noy na ang ginamit na panaksak na isang kutsilyo na gamit namin sa bahay ay inihulog niya sa manhole sa tapat ng aming bahay matapos ang insidente.*
>
> At ang isang piraso ng kwintas na kinuha rin nya mula kay Barbie ay naisanla niya sa isang sanglaan sa Quezon City.
>
> Na ang suot niyang tsinelas ay nag/iwan [sic] ng bakas sa pinangyarihan ng insidente. At sya rin ang nakasugat sa kanyang sariling kamay ng [sic] maganap ang insidente.
>
> *Na sinabi niya sa akin na wala siyang intensyon na patayin [sic] si Barbie kundi ay pagnakawan lamang*.[70] (Emphasis supplied)

Even if this statement was not taken into account for being hearsay, further investigation conducted still led to the unearthing of the kitchen knife with a hair strand from a manhole near Chavez's house.[71]

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66 Brief for accused-appellant, CA *rollo*, pp. 69–70, *citing* TSN, February 14, 2011, pp. 4–9.

67 *See Serrano v. People,* G.R. No. 175023, July 5, 2010 [Per J. Brion, Third Division], *citing Rivera v. People,* 515 Phil. 824, 832 (2006) [Per J. Callejo, Sr., First Division], *citing People v. Delim*, 444 Phil. 430, 450 (2003) [Per J. Callejo, Sr., En Banc].

68 *See People v. Sanchez,* 358 Phil. 527, 535 (1998) [Per J. Quisumbing, First Division].

69 *Rollo*, pp. 5 and 7.

70 Id. at 6–7.

71 Id. at 7.

Third, no reason exists to disturb the lower court's factual findings giving credence to 1) Peñamante's positive identification of Chavez as the person leaving Barbie's house that early morning of October 28, 2006[72] and 2) the medico-legal's testimony establishing Barbie's time of death as 12 hours prior to autopsy at 1:00 p.m., thus, narrowing the time of death to approximately 1:00 a.m. of the same day, October 28, 2006.[73]

All these circumstances taken together establish Chavez's guilt beyond reasonable doubt for the crime of homicide.

III

There is a disputable presumption that "a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that thing which a person possesses, or exercises acts of ownership over, are owned by him."[74] Thus, when a person has possession of a stolen property, he can be disputably presumed as the author of the theft.[75]

Barbie's missing cellular phones were turned over to the police by Chavez's mother, and this was never denied by the defense.[76] Chavez failed to explain his possession of these cellular phones.[77] The Court of Appeals discussed that "a cellular phone has become a necessary accessory, no person would part with the same for a long period of time, especially in this case as it involves an expensive cellular phone unit, as testified by Barbie's *kababayan,* witness Raymond Seno[f]a."[78]

However, with Chavez and Barbie's close relationship having been established, there is still a possibility that these cellphones were lent to Chavez by Barbie.

The integrity of these cellphones was also compromised when SPO3 Casimiro testified during cross-examination that the police made no markings on the cellphones, and their SIM cards were removed.

Q: But you did not place any marking on the cellphone, Mr. witness?

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72 RTC records, p. 46, decision.
73 *Rollo,* p. 10.
74 REV. RULES ON EVIDENCE, rule 131, sec. 2(j).
75 *See Lozano v. People,* G.R. 165582, July 9, 2010, 624 SCRA 596, 603 [Per J. Mendoza, Third Division].
76 *Rollo*, p. 10.
77 Id. at 10.
78 Id. at 10–11.

A: No, sir.

Atty. Villanueva: No further questions, Your Honor.

Court: When you received the items, there were no markings also?

Witness: No, Your Honor.

Court: The cellular phones, were they complete with the sim cards and the batteries?

A: There's no sim card, Your Honor.

Q; No sim card and batteries?

A; Yes, Your Honor.

Q: No markings when you received and you did not place markings when these were turned over to the Public Prosecutor, no markings?

A: No markings, Your Honor.[79]

The other missing items were no longer found, and no evidence was presented to conclude that these were taken by Chavez. The statement of Chavez's mother mentioned that her son pawned one of Barbie's necklaces ["*At ang isang piraso ng kwintas na kinuha rin nya mula kay Barbie ay naisanla niya sa isang sanglaan sa Quezon City*"[80]], but, as earlier discussed, this statement is mere hearsay.

In any case, the penalty for the crime of theft is based on the value of the stolen items.[81] The lower court made no factual findings on the value of the missing items enumerated in the information — one Nokia cellphone unit, one Motorola cellphone unit, six pieces ladies ring, two pieces necklace, and one bracelet.

At most, prosecution witness Raymund Senofa, a town mate of Barbie, testified that he could not remember the model of the Motorola flip-type cellphone he saw used by Barbie but that he knew it was worth □19,000.00 more or less.[82] This amounts to hearsay as he has no personal knowledge on how Barbie acquired the cellphone or for how much.

These circumstances create reasonable doubt on the allegation that Chavez stole the missing personal properties of Barbie.

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79 TSN, June 17, 2009, pp. 23–24.
80 *Rollo*, p. 5.
81 *See* REV. PENAL CODE, art. 309.
82 RTC records, p. 42.

IV

It is contrary to human nature for a mother to voluntarily surrender her own son and confess that her son committed a heinous crime.

Chavez was 22 years old, no longer a minor, when he voluntarily went to the police station on November 5, 2006 for investigation,[83] and his mother accompanied him. SPO3 Casimiro testified that the reason she surrendered Chavez was because "she wanted to help her son"[84] and "perhaps the accused felt that [the investigating police] are getting nearer to him."[85] Nevertheless, during cross-examination, SPO3 Casimiro testified:

> Q: Regarding the mother, Mr. witness, did I get you right that when the mother brought her son, according to you she tried to help her son, is that correct?
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> A: That is the word I remember, sir.
>
> Q: Of course, said help you do not know exactly what she meant by that?
>
> A: Yes, sir.
>
> Q: It could mean that she is trying to help her son to be cleared from this alleged crime, Mr. witness?
>
> A: Maybe, sir.[86]

Chavez's mother "turned-over (2) units of Cellular-phones and averred that her son Mark Jason told her that said cellphones belong[ed] to victim Barbie. . . [that] NOY was wounded in the incident and that the fatal weapon was put in a manhole infront [sic] of their residence."[87] The records are silent on whether Chavez objected to his mother's statements. The records also do not show why the police proceeded to get his mother's testimony as opposed to getting Chavez's testimony on his voluntary surrender.

At most, the lower court found that Chavez's mother was informed by the investigating officer at the police station of the consequences in executing a written statement without the assistance of a lawyer.[88] She proceeded to give her statement dated November 7, 2006 on her son's

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83 TSN, February 14, 2011, p. 9.
84 TSN, June 17, 2009, p. 13.
85 Id.
86 Id. at 21.
87 RTC records, p. 9.
88 *Rollo*, p. 6.

confession of the crime despite the warning.[89] SPO3 Casimiro testified during his cross-examination:

> Q: Do you remember if anybody assisted this Anjanette Tobias when she executed this Affidavit you mentioned?
>
> A: She was with some neighbors.
>
> Atty. Villanueva
>
> Q: How about a lawyer, Mr. Witness?
>
> A: None, sir.
>
> Q: So, in other words, no lawyer informed her of the consequence of her act of executing an Affidavit?
>
> A: We somehow informed her of what will be the consequences of that statement, sir.
>
> Q: So, you and your police officer colleague at the time?
>
> A: Yes, sir.[90]

The booking sheet and arrest report states that "when [the accused was] appraised [sic] of his constitutional rights and nature of charges imputed against him, accused opted to remain silent."[91] This booking sheet and arrest report is also dated November 7, 2006, or two days after Chavez, accompanied by his mother, had voluntarily gone to the police station.

The right to counsel upon being questioned for the commission of a crime is part of the *Miranda rights*, which require that:

> . . . (a) any person under custodial investigation has the right to remain silent; (b) anything he says can and will be used against him in a court of law; (c) he has the right to talk to an attorney before being questioned and to have his counsel present when being questioned; and (d) if he cannot afford an attorney, one will be provided before any questioning if he so desires.[92]

The *Miranda rights* were incorporated in our Constitution but were modified to include the statement that any waiver of the right to counsel must be made "in writing and in the presence of counsel."[93]

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89 Id.
90 TSN, November 5, 2008, pp. 19–20.
91 RTC records, p. 20.
92 *People v. Mojello,* 468 Phil. 944, 952–953 (2004) [Per J. Ynares-Santiago, En Banc].
93 CONST., art. III, sec. 12; *People v. Mojello,* 468 Phil. 944, 953 (2004) [Per J. Ynares-Santiago, En Banc].

The invocation of these rights applies during custodial investigation, which begins "when the police investigation is no longer a general inquiry into an unsolved crime but has begun to focus on a particular suspect taken into custody by the police who starts the interrogation and propounds questions to the person to elicit incriminating statements."[94]

It may appear that the *Miranda rights* only apply when one is "taken into custody by the police," such as during an arrest. These rights are intended to protect ordinary citizens from the pressures of a custodial setting:

> *The purposes of the safeguards prescribed by Miranda are to ensure that the police do not coerce or trick captive suspects into confessing, to relieve the "inherently compelling pressures" "generated by the custodial setting itself,"* "which work to undermine the individual's will to resist," and as much as possible to free courts from the task of scrutinizing individual cases to try to determine, after the fact, whether particular confessions were voluntary. Those purposes are implicated as much by in-custody questioning of persons suspected of misdemeanours as they are by questioning of persons suspected of felonies.[95] (Emphasis supplied)

Republic Act No. 7438[96] expanded the definition of custodial investigation to "include the practice of issuing an 'invitation' to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the 'inviting' officer for any violation of law."[97]

This means that even those who voluntarily surrendered before a police officer must be apprised of their *Miranda rights*. For one, the same pressures of a custodial setting exist in this scenario. Chavez is also being questioned by an investigating officer in a police station. As an additional pressure, he may have been compelled to surrender by his mother who accompanied him to the police station.

This court, thus, finds that the circumstantial evidence sufficiently proves beyond reasonable doubt that Chavez is guilty of the crime of homicide, and not the special complex crime of robbery with homicide.

On the service of Chavez's sentence, the trial court issued the order

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94 *People v. Lara,* G.R. No. 199877, August 13, 2012*,* 678 SCRA 332, 348 [Per J. Reyes, Second Division], *citing People v. Amestuzo,* 413 Phil. 500, 508–509 (2001) [Per J. Kapunan, First Division].

95 *Luz v. People,* G.R. No. 197788, February 29, 2012, 667 SCRA 421, 433–434 [Per C.J. Sereno, Second Division], *citing Berkemer v. McCarty,* 468 U.S. 420 (1984).

96 Rep. Act No. 7438 (1992), An Act Defining Certain Rights of Person Arrested, Detained or Under Custodial Investigation as well as the Duties of the Arresting, Detaining, and Investigating Officers, and Providing Penalties for Violations Thereof.

97 Rep. Act No. 7438 (1992), sec. 2.

dated November 14, 2006 in that "as prayed for, the said police officer is hereby ordered to immediately commit accused, Mark Jason Chavez y Bitancor @ Noy to the Manila City Jail and shall be detained thereat pending trial of this case and/or until further orders from this court."[98] The order of commitment dated September 28, 2011 was issued after his trial court conviction in the decision dated August 19, 2011.

Chavez has been under preventive detention since November 14, 2006, during the pendency of the trial. This period may be credited in the service of his sentence pursuant to Article 29 of the Revised Penal Code, as amended:

> ART. 29. *Period of preventive imprisonment deducted from term of imprisonment.* – Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing after being informed of the effects thereof and with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:
>
> 1. When they are recidivists, or have been convicted previously twice or more times of any crime; and
>
> 2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.
>
> If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of a counsel and shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment.
>
> Credit for preventive imprisonment for the penalty of *reclusion perpetua* shall be deducted from thirty (30) years.
>
> Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. Computation of preventive imprisonment for purposes of immediate release under this paragraph shall be the actual period of detention with good conduct time allowance: *Provided, however,* That if the accused is absent without justifiable cause at any stage of the trial, the court may *motu proprio* order the rearrest of the accused: *Provided, finally,*

[98] RTC records, p. 23.

> That recidivists, habitual delinquents, escapees and persons charged with heinous crimes are excluded from the coverage of this Act. In case the maximum penalty to which the accused may be sentenced is *destierro,* he shall be released after thirty (30) days of preventive imprisonment.[99]

V

Finally, this court laments that object evidence retrieved from the scene of the crime were not properly handled, and no results coming from the forensic examinations were presented to the court. There was no examination of the fingerprints found on the kitchen knife retrieved from the manhole near the house of Chavez.[100] There were no results of the DNA examination done on the hair strands found with the knife and those in the clutches of the victim. Neither was there a comparison made between these strands of hair and Chavez's. There was no report regarding any finding of traces of blood on the kitchen knife recovered, and no matching with the blood of the victim or Chavez's. The results of this case would have been rendered with more confidence at the trial court level had all these been done. In many cases, eyewitness testimony may not be as reliable — or would have been belied — had object evidence been properly handled and presented.

We deal with the life of a person here. Everyone's life — whether it be the victim's or the accused's — is valuable. The Constitution and our laws hold these lives in high esteem. Therefore, investigations such as these should have been attended with greater professionalism and more dedicated attention to detail by our law enforcers. The quality of every conviction depends on the evidence gathered, analyzed, and presented before the courts. The public's confidence on our criminal justice system depends on the quality of the convictions we promulgate against the accused. All those who participate in our criminal justice system should realize this and take this to heart.

WHEREFORE, the judgment of the trial court is **MODIFIED**. Accused-appellant Mark Jason Chavez y Bitancor alias "Noy" is hereby declared **GUILTY** beyond reasonable doubt of the separate and distinct crime of **HOMICIDE**. Inasmuch as the commission of the crime was not attended by any aggravating or mitigating circumstances, accused-appellant Chavez is hereby **SENTENCED** to suffer an indeterminate penalty ranging from eight (8) years and one (1) day of *prision mayor,* as minimum, to seventeen (17) years and four (4) months of *reclusion temporal,* as maximum.

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99 REV. PENAL CODE, sec. 29, as amended by Rep. Act No. 10592 (2013).

100 TSN, June 17, 2009, pp. 10–11. SPO3 Casimiro testified that he, as well as Police Inspector Ishmael Dela Cruz who turned over the knife to him, held the knife with their bare hands.

Accused-appellant Chavez's period of detention shall be deducted if consistent with Article 29 of the Revised Penal Code.

SO ORDERED.

MARVIC M.V.F. LEONEN
Associate Justice

WE CONCUR:

ANTONIO T. CARPIO
Associate Justice
Chairperson

ARTURO D. BRION
Associate Justice

MARIANO C. DEL CASTILLO
Associate Justice

JOSE CATRAL MENDOZA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice