when we compare the two provisions the situation becomes clear. Section 439, unequivocally, places an embargo on the power of the revisional Court to convert an order of acquittal into conviction. On the other hand, the legislature conferred this power on this Court in the proviso to sub-Article (2) of Article 203-DD with a precondition that an opportunity of hearing shall be given to the accused. It will be useful to reproduce the two provisions:—

> *"439(2).*—No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.
>
> (4) Nothing in this section shall be deemed to authorise a High Court:
>
> (*a*) to convert a finding of acquittal into one of conviction; or
>
> *Article 203-DD(2).*—"In any case the record of which has been called for by the Court, the Court may pass such order as it may deem fit and may enhance the sentence :
>
> Provided that nothing in this Article shall be deemed to authorise the Court to convert a finding of acquittal into one of conviction *and* no order under this Article shall be made to the prejudice of the accused *unless* he has had an opportunity of being heard in his own defence."

(Underlining* supplied)

There is a separate provision in section 439, prohibiting conversion of an order of acquittal into conviction while the word 'and' in the proviso of Article 203-DD(2) is conjunctive. It makes the two prohibitions conditional to providing an opportunity of hearing to the accused if an order is to be made to his prejudice. The wisdom of this change is also apparent. Undoubtedly, a criminal revisional Court could not convert an order of acquittal into one of conviction even if there was ample evidence on record and was obliged to send the case for retrial. However, while the power of ordering retrial is intact even under the Constitution for the Federal Shariat Court, in view of the provision 'the Court may pass such order as it may deem fit' it can save time, expense, and harassment, if there is sufficient evidence on the record to convict and punish straightaway. In this view of the law, there is no substance in this contention.

11. In view of the above, we set aside the order of acquittal so far as accused/respondent Muhammad Sabir son of Muhammad Shahabuddin is concerned and convict him under section 377, P. P. C. He shall suffer four years' R. I. He is also fined a sum of Rs. 1,000 (one thousand) and shall suffer 3 months' R. I., in case of default in payment of fine. He is present in Court on bail. His bail bonds are cancelled and he is taken into Police custody to undergo his sentence.

M. B. A./324/F

Order accordingly.

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*[Here in italics]

P L D 1987 Federal Shariat Court 43

Before Fakhruddin H. Shaikh and Muftakhiruddin, JJ

LIAQAT BAHADUR and others--Appellants

versus

THE STATE--Respondent

Criminal Appeals Nos.25/P and 30/P of 1986, decided on 12th May, 1987.

(a) Qanun-e-Shahadat Order (10 of 1984)--

Art. 21, Explanation I--Recovery--Statements leading to recovery of incriminating articles have to be precise--When fact is discovered at the behest of two persons, it should be clear as to who gave the information first either by words or gesture so as to fasten discovery of incriminating article.--[Recovery].

Statements leading to the recovery of the incriminating articles should be precise; and if the fact is discovered at the behest of two persons then it should be clear as to who gave the information first either by words or gesture so as to fasten the discovery of the incriminating articles. In the instant case the statements contained in the memorandum did not show specifically as to from whose information the recovery was effected so as to fasten the statement with an act in terms of Explanation I to Article 21 of Qanun-e-Shahadat Order, 1984 and also for the reasons as to who was the first to give that statement which led to the recovery of the articles as in that eventuality the statement of the other could not be linked with the act as the fact had already been discovered. As such none of the accused could be held liable. [p. 48] B

If two or more persons are alleged to have pointed out a relevant fact, it must be shown who pointed out the fact first; and if that is not done, the evidence of pointing out will not be admissible against any one of the accused. Where no material fact is discovered, and the accused merely points out places where certain incidents took place the evidence of pointing out will not be admissible. [p. 48] A [p. 48] A

Rashid Ahmad's case 1984 PCr.LJ 1949 and Monir's Commentary on the Law of Evidence, 1974 Edn., p.62 **ref.**

(b) Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979)--

---S. 9--Penal Code (XLV of 1860), Ss. 34, 380 & 411--Appreciation of evidence--Recovery--Complainant admitting that recovery witness was his cousin and was informer of the incident and was not the inhabitant of the locality where the search was to be made--No reliance, held, could be placed on testimony of such a witness in circumstances.--[Recovery]. [p. 48] C

(c) Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979)--

---S. 9--Penal Code (XLV of 1860), Ss. 380 & 411--Appreciation of evidence--Theft--Recovery--Identification of goods stolen--Theft of guns, transistor, radios and sewing machine from a shop--Number or particular marks of identification of stolen property not given in

F.I.R.--Complainant was neither present where recoveries were made nor any identification test was held--No Stock Register of goods stolen from shop was taken from complainant though he stated that it was shown to the Investigating Officer--Stock Register was the only record which could have established the identity and extent of stolen property--F.I.R. showing that stolen property included six sewing machines and six radio transistors but Investigating Officer found these articles in the shop--Held, circumstances created serious doubts that recovered articles were actually the stolen property and maker of F.I.R. also stood discredited--Prosecution was, therefore, unable to prove its case beyond reasonable doubt. [p. 48] D

(d) Offences Against Property (Enforcement of Hudood) Ordinance (VI of 1979)--

---S. 9--Penal Code (XLV of 1860), Ss. 380 & 411--Appreciation of evidence--Case property was not produced in Court when complainant was examined but had already been handed over to him and some of suit property had already been sold to the customers by complainant--Recovery of stolen property from house of accused could not be exclusively attributed to him when there was evidence that other persons were also living in that Kotha and one of such persons who was also sent up for trial but Trial Court did not like to charge him for the reason not satisfactorily explained.--[Recovery]. [p. 49] E

(e) Criminal Procedure Code (V of 1898)--

---S. 164--Confession--Where the maker of statement entirely exonerates himself or throws principal blame on others, such statement has to be excluded from consideration as such statements were robbed of all evidentiary value against other accused and cast a doubt on its veracity as against the maker himself.

Confession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. The accused must implicate him substantially to the same extent as he does to the other accused. The statements which inculpate the maker more than or equally with others alone can afford any satisfactory guarantee of their truth. When the maker of a statement entirely exonerates himself or throws the principal blame on other such statement is to be excluded from consideration as such statements are robbed of all evidentiary value against the other accused and cast a doubt on its veracity as against the maker himself. [p. 49] F

(f) Criminal Procedure Code (V of 1898)--

---S. 164--Confession--Judicial confession--Value--Duty of Court.

In the matter of a confession the real difficulty arises in determining whether it is voluntary and true. All judicial confessions bear the stamp of the recording Magistrate's approval, who ordinarily fulfils the formalities before getting down to record the confession but compliance by the Magistrate with the routine formalities will not furnish a true and a conclusive index to the real working of the mind of an accused person to show that the confession was his volitive act, pure and simple unaffected by any external circumstance and muchless is it a proof of the fact that the confession is true. Therefore, when the mind of a Judge is engaged in assessing the value of a confession he has to go much deeper than the record of the confession. The entire set up of the prosecution case and the surrounding

circumstances, and the intrinsic value of the confession itself will have to be taken into account to find out if it is voluntary and true. Besides putting the set questions the Magistrate is required to make a real endeavour to find out the voluntary nature of the confession. It is his solemn duty, which should be performed with great care and caution and not mechanically and the following questions be put to accused.

(1) For how long have you been with the police?

(2) Has any pressure been brought to bear upon you to make a confession?

(3) Have you been threatened to make a confession?

(4) Has any inducement been given to you?

(5) Have you been told that you will be made an approver?

(6) Why are you making this confession? [p. 49] H

The judicial history presents abundant warning against the danger of placing too much reliance on uncorroborated and retracted confession. [p. 49] G

Rashid Ahmed's case 1984 P Cr. L J 1949 **ref.**

(g) Criminal Procedure Code (V of 1898)--

---S. 164--Confession--Retracted confession is a source of anxiety to those who have to see that justice is properly administered. [p. 50] I

M. Zahurul Haq for Appellants (in Criminal Appeal No.25/P of 1986).

Abdur Rehman Khan for Appellant (in Criminal Appeal No.30/P of 1986).

Abdul Qayum for the State (in both the Appeals).

Date of hearing: 20th April, 1987.

JUDGMENT

MUFTAKHIRUDDIN, J.--The learned Additional Sessions Judge Swabi vide his order dated 1-7-1986 has convicted the appellants (1) Liaqat Bahadur son of Taj Bahadur (2) Sher Zaman son of Hakim Khan and (3) Fayaz Ahmed son of Muhammad Ashraf and one Mir Zaman son of Muhammad Zaman under section 380, P.P.C. and section 411, P.P.C. and has sentenced them as under:-

> Liaqat Bahadur, Sher Zaman and Fayaz Ahmed under section 380, P.P.C. have been sentenced to five years' R.I. with a fine of Rs.500 or in default of payment of fine to further undergo S.I. for six months each while under section 411, P.P.C. they have been sentenced to one year R.I.

The sentences are to run concurrently. Mir Zaman has not filed any appeal but the others have filed separate appeals. Liaqat Bahadur and Sher Zaman have challenged their convictions and sentences by appeal registered as Cr.A.No.25/P of 1986 while Fayaz has filed the Appeal No.30/P of 1986. Since both the appeals have been filed against the same judgment, these appeals have been heard together and shall be disposed of by this judgment.

2. On 30-3-1981 at about 8-00 a.m. one Abdul Qayum shopkeeper

Bazar Topi appeared before Muhammad Islam Khan S.H.O. Police Station Topi. His statement was recorded and through a Murasila sent to the police station Topi where a formal F.I.R. No.32 of 1981 was registered by Niaz Muhammad S.I. The complaint made by Abdul Qayum is as follows:-

> "I am running Arms and Ammunition Dealer's shop in Bazar Topi. Yesterday at 1800 hours, I closed my shop and went to my house in village Baja, where today in the morning, I was informed that the lock of my shop has been broken. On this information, I came to the shop and found another lock was put on and on my enquiry Haji Bahadur Sher son of Dilbar Khan, resident of Topi told me that at 2100 hours, they found my shop open, on which he summoned the two Chowkidars, Raza Khan and Tariq, who both showed their ignorance and he put on a new lock on the shop and closed it. I had checked the articles in my shop and had found the following as missing.
>
> (1) 8 shotguns .12 bore country-made.
>
> (2) 584 cartridges of .12 bore.
>
> (3) 6 sewing machines Pak-made.
>
> (4) 6 One Band National Transistors Pak-made.
>
> The value of stolen articles was assessed as Rs.9,712. The numbers of shotguns I will give later on. At present I do not even suspect any body."

The investigation was taken in hand by Muhammad Islam Khan he took into possession four cartridges of 12 bore allegedly lying on the ground in the shop and also a pad lock and the recovery memos therefor were prepared. During the spot inspection three broken pad locks and an iron rod were also obtained from the place and Fard Exh.P.C. was prepared. Six sewing machines Scala-made and six transistor radios were also found missing in the shop (these properties were alleged to have been stolen from the shop of the complainant (Abdul Qayum) in the F.I.R. The site plan Exh.P.B. was prepared. Mir Zaman, Liaqat Bahadur and Fayaz were arrested on 4-4-1981 and it is alleged that at their joint pointation on 7-4-1981 a bag Exh.P/5 containing a box was recovered from the house of Sher Zaman. 507 cartridges of .12 bore were found in that box. Four guns of .12 bore Exh. P/6 to P/9 were found on one cot (پلنگ) and from the other cot three more shotguns Exh.P/10 to P/12 were recovered. The same were taken into possession vide recovery memo. Exh.P.C-3. A D.B. shotgun Exh.P/13 alongwith its licence copy Exh.P/14 was also taken into possession (it is alleged that this gun was used in the commission of the theft). Sher Zaman (accused) was arrested on 7-4-1981. On 11-4-1981 Mir Zaman, Liaqat Bahadur and Sher Zaman were produced before the Ilaqa Magistrate (Yar Muhammad P.W.1) who recorded their confession. During the investigation, it transpired that, the accused persons were involved in some other theft cases. The F.I.Rs. Nos. 38, 40 and 41 were, therefore, registered on different dates thereafter. It is significant that the stock register though found in the shop was not taken into possession. After the completion of the investigation the challan was put up in Court and besides the four accused persons mentioned above one Hakim Khan son of Rahim Khan who was found to be the resident of the house

wherefrom the recoveries of shotguns and cartridges were made was also sent up for trial but the learned Sessions Judge did not consider it necessary to proceed against him and he was acquitted of the charge.

5. Haji Raj Muhammad Khan who later took over as Additional Sessions Judge, Mardan at Swabi framed charges on 21-6-1982 against (1) Mir Zaman, (2) Liaqat Bahadur, (3) Fayaz and (4) Sher Zaman under section 9, Offences Against Property (Enforcement of Hudood) Ordinance, 1979 read with section 34, P.P.C. and also under section 457/34, P.P.C. and also under section 380/34, P.P.C. All the four accused were further charged with offence punishable under section 411 P.P.C. for being found in possession of the stolen property. The charges were denied and the prosecution produced the following witnesses.-

P.W.1 (Yar Muhammad Khan--the Magistrate who had recorded the confession). P.W.2 (Sher Aman--a witness of the scene of occurrence before him the locks etc. were taken into possession on 30-3-1981). P.W.3 (Abdul Rashid--a cousin of the complainant before whom the stolen property was allegedly recovered vide inventory Exh.P.C/3). P.W.4 (Humayun--the owner of the shop occupied by Abdul Qayum on rent). P.W.5 (Haji Bahadur Sher--who had first detected the lock of the shop having seen broken in the night and had placed his own lock). P.W.6 (Niaz Muhammad S.I.--a formal witness who had recorded the F.I.R.). P.W.7 (Abdul Qudus--the father of the complainant in whose name the licence for arms sale was found). P.W.7 (Abdul Qayum--the complainant) and P.W.8 (Muhammad Islam).

Samandar Khan an attesting witness of the recovery was abandoned as unnecessary and also the other witnesses mentioned in the calendar of witnesses. All the accused denied the allegations in their statements recorded under section 342, Cr.P.C. Mir Zaman, Sher Zaman and Liaqat Bahadur retracted from their confessions and alleged torture during the investigation and pleaded false implication.

The trial Court, however, found all the four persons guilty and has sentenced them as mentioned above. Mir Zaman has chosen not to appeal while the other three have filed appeals.

6. The trial Court has been persuaded to take into consideration the alleged recovery which according to the prosecution's own case was at the joint pointation of the appellants Liaqat Bahadur, Fayaz Ahmed and Mir Zaman (who has not filed appeal) from the house of Sher Zaman and also the confession of Sher Zaman, Liaqat Bahadur and Mir Zaman which at the trial have been retracted.

The material witness for the recovery are P.W.3 Abdur Rashid and P.W.8 Muhammad Islam Khan. It would be useful to reproduce the entire examination-in-chief of P.W.3.

> "I am shopkeeper in Topi Bazar. I joined the police investigation. Muhammad Islam S.H.O. of Police Station Topi and Sumandar Khan, Member Union Council came to my shop and I accompanied them to the Kotha of Sher Zaman. At the pointation of accused live cartridges Exh.P/5 were recovered from a bag which was lying on a cot. The shot guns Exh.P/6 to P/12 were lying on two cots (Chapar cots) and these were recovered by the Investigating Officer alongwth the live

cartridges mentioned in the memo and these were sealed into a parcel vide R/M Exh.P.C./3 and it correctly bears my signature. Similarly one shotgun Exh.P/13 and licence copy Exh.P/14 were also recovered by the Investigating Officer vide the same memo referred to above."

Abdur Rashid did not specify which accused had informed the police that the stolen articles could be recovered from the Kotha of Sher Zaman as he had joined the Investigating Officer who was already accompanied by Sumandar Khan (given up witness). The statement of Rashid, therefore, leads to nowhere.

7. Mr. Zahoor-ul-Haq, Advocate the learned counsel for the appellants Liaqat and Sher Zaman has contended that the recovery by itself is illegal as it is the joint pointation and cannot distinctly be attributed to any of the accused in this connection he has referred to Rashid Ahmed's case 1984 P Cr. L J 1949.

8. The contention of the learned counsel finds support from the principle enunciated by Monir in his commentary on the Law of Evidence at page 62 of his book 1974 Edn.

> "If however, two or more persons are alleged to have pointed out a relevant fact, it must be shown who pointed out the fact first; and if that is not done, the evidence of pointing out will not be admissible against any one of the accused. Where no material fact is discovered, and the accused merely points out places where certain incidents took place the evidence of pointing out will not be admissible."

It can be reasonably insisted that the statements leading to the recovery of the incriminating articles should be precise; and if the fact is discovered at the behest of two persons then it should be clear as to who gave the information first either by words or gesture so as to fasten the discovery of the incriminating article. In the instant case the statements contained in the memorandum Exh.P.C/3 did not show any specifically as to from whose information the recovery was effected so as to fasten the statement with an act in terms of explanation 1 to Art. 21 of Qanun-e-Shahadat, 1984 and also for the reason as to who was the first to give that statement which led to the recovery of the articles as in that eventuality the statement of the other could not be linked with the act as the fact had already been discovered. As such none of the appellants can be held liable.

Besides it has been admitted by Abdul Qayum P.W.7 that Rashid Ahmed is his cousin and he was the informer of the incident and admittedly is not the inhabitant of the locality where the search was to be made. The evidence of recovery therefore, is not as impartial as the prosecution wants us to believe. The prosecution has not assigned any reason as to why Sumandar Khan has been given up. In the circumstances of the case we are not prepared to place any reliance on Abdul Rashid. The statement of P.W.8 Muhammad Islam Khan does not inspire confidence because the way in which the property is alleged to have been recovered appears to be not free from doubt. It is said that the shotguns were found exposed on the cost it is simply unbelievable.

Another important fact which cannot be ignored is that no Stock Register was taken from Abdul Qayyum though he says that it was shown to the Investigating Officer. Only the Stock Register

could have established the identity and extent of the stolen property. We, therefore, entertain serious doubts that the recovered articles were actually the stolen property as the numbers or particular marks of identification are not given in the F.I.R. The complainant was neither present where the recoveries were made nor any identification test was held. In the F.I.R. the stolen property included six sewing machines and six National Transistors but the Investigating Officer found them in the shop. The maker of the F.I.R. thus, stands discredited.

9. It is significant that when P.W. Abdul Qayyum was examined in Court the case property was not produced in Court and had already been handed over to him and some of it had even been sold to the customers by Abdur Qayyum. The recovery of the stolen articles from the house of Sher Zaman cannot be exclusively attributed to him. When it has come in evidence that other persons also were living in that Kotha and one of them i.e. Hakeem was also set up for trial but the trial Court did not like to charge him even for the reason not satisfactorily explained.

10. Thus, there remains only the confessions which have been retracted. Confession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. The accused must implicate him substantially to the same extent as he does to the other accused. The statement which inculpate the maker more than or equally with others alone can afford any satisfactory guarantee of their truth. When the maker of a statement entirely exonerates himself or throws the principle blame on others is to be excluded from consideration as such statements are robbed of all evidentiary value against the other accused and casts a doubt on its veracity as against the maker himself. In the instant case the three accused/appellants have not given identical account of the crime and have not tarred themselves with the same brush. When we read the alleged confession of Sher Zaman we find that he has not admitted the commission of theft. All that which he had said is that Mir Zaman and Liaqat and Fayyaz came to his house and asked him to keep the shotguns and cartridges. In the confessional statement Liaqat Bahadur has said that at the time when Gulshah's Hotel was burgled and T.V. and Tape-Recorder were stolen Sher Zaman was with him. Liaqat Bahadur did not say that he had pointed the place of recovery or that he was present when it was made. Similarly Mir Zaman did not admit that during the commission of theft from the shop of Gulshah, Sher Zaman was with him. Mir Zaman also did not say that the stolen articles were recovered at his instance or that he was present when the recovery was made from the house of Sher Zaman.

The judicial history presents abundant warning against the danger of placing too much reliance on uncorroborated and retracted confession.

11. In the matter of a confession the real difficulty arises in determining whether it is voluntary and true. All judicial confessions bear the stamp of the recording Magistrate's approval, who ordinarily fulfils the formalities before getting down to record the confession but compliance by the Magistrate with the routine formalities will not furnish a true and a conclusive index to the real working of the mind of an accused person to show that the confession was his volitive act, pure and simple unaffected by any external circumstance and

much less is it a proof of the fact that the confession is true. Therefore, when the mind of a Judge is engaged in assessing the value of a confession he has to go much deeper than the record of the confession. The entire set up of the prosecution case and the surrounding circumstances, and the instrinsic value of the confession itself will have to be taken into account to find out if it is voluntary and true. Besides putting the set questions the Magistrate is required to make a real endeavour to find out the voluntary nature of the confession. It is his solemn duty, as pointed out by a Division Bench of the Lahore High Court in Said Begum v. The State P L D 1958 Lah. 559 which should be performed with great care and caution and not mechanically and the following questions be put to him:-

(1) For how long have you been with the police?

(2) Has any pressure been brought to bear upon you to make a confession?

(3) Have you been threatened to make a confession?

(4) Has any inducement been given to you?

(5) Have you been told that you will be made an approver?

(6) Why are you making this confession?

12. A retracted confession is always a source of anxiety to those who have to see that justice is properly administered. The Magistrate has admitted, that no such questions were put to the accused. In the cross-examination of Advocate for Mir Zaman he has conceded that:-

> "I have not asked from the accused as to for how long he remained in police custody. I did not write as to whether I had asked the accused as to whether he was tortured by the local police. I have not inquired from the accused as to why he was making confession."

To a question put to him by the counsel for Liaqat the Magistrate admitted:-

> "It is correct that before recording the confessional statement I had not placed him in a position to consult his counsel or relatives."

To a question put by the counsel for Mir Zaman the learned Magistrate did not remember the name of the police official who had taken the accused to the lock up from his Court and admitted:-

> "I have written that I have satisfied myself that the accused was making a voluntary confession on the basis that I had enquired from him about all the possible questions mentioned in the printed form which he had answered."

Another reason for discarding tne so-called confession is that Sher Zaman and Liaqat Bahadur were arrested on 4-4-1981 and the articles had also been recovered on 7-4-1981 but they were produced before the Magistrate for confession on 11-4-1981 and no satisfactory explanation is offered. In the present case these are circumstances which throw doubt on the voluntary nature of the confession firstly they were not produced for confession immediately after their arrest on 4-4-1981 and secondly the Magistrate recording the confession had not put necessary questions to the appellants as laid down in case Mst. Said Begum v. The State.

13. For the above reasons we are of the view that the prosecution has not been able to prove its case beyond reasonable doubt. Accordingly both the appeals are allowed and the convictions and sentences of the appellants are set aside and they are acquitted of the charges. They shall be released forthwith if not required in any other case.

M.B.A./342/F.Sh.C Appeals allowed.

P L D 1987 Federal Shariat Court 51

Before Gul Muhammad Khan, C. J. and Kamal Mustafa Bokhari, J

THE STATE--Appellant

versus

ZAHID HUSSAIN and 4 others--Respondents

Criminal Appeal No.108/L of 1987, decided on 2nd June, 1987.

(a) Constitution of Pakistan (1973)--

---Art. 203-C--History of legislation on Federal Shariat Court traced. [p. 52] A et seq

(b) Constitution of Pakistan (1973)--

---Arts. 203-E & 203-J--Federal Shariat Court (Procedure) Rules, 1981, R.18(1-A)--Powers and procedure of Federal Shariat Court--Federal Shariat Court (Procedure) Rules, 1981, retrospective in operation--Appeal--Limitation--Federal Shariat Court is given the power to regulate its proceedings and procedure the way it deemed fit--Federal Shariat Court, by R.18(1-A), Federal Shariat Court Rules, 1981 has provided a period of 60 days, without any distinction, whether the appellant is a private person or a Government.--[Appeal (civil)-Limitation].

Though the period of limitation to file an appeal before the Shariat Appellate Bench of the Supreme Court is provided in Article 203-F differently for the Government and others, the Federal Shariat Court was given the power to regulate its proceedings and procedure the way it deemed fit under its rule 18(1-A), the Federal Shariat Court provided a period of 60 days, without any distinction, whether the appellant is a private person or a Government. Thus, if the Constitution and the rules made thereunder have to prevail over the Limitation Act the period of limitation will remain 60 days even if the appeal is to be filed by the Government. [p. 54] A

The source of power to regulate the practice and procedure of the High Court was expressly provided in Article 12 (P.O. 22 dated 2nd December, 1978), and later in Article 203-E(2)(a) as per P.O.3 of 1979 dated 7th February, 1979). Thus, this power was available to the predecessor Court right from the very beginning and this Court was seized of it just on the date it got the appellate jurisdiction. This power would be quite adequate for the purpose even if Article 203-J of the Constitution may not be pressed into service. Further, the rules of procedure have always retrospective effect. Thus, if there is a power to make rules with regard to the subject under discussion the rules shall be applicable retrospectively. [p. 54] B