

A

REGINA

v.

SARAS WATI

B

[SUPREME COURT, 1983—Tuivaga C.J. 15 February]

Revisional Jurisdiction

C

*Criminal Law—Minor offences—loitering for purpose of prostitution—appropriate sentence—appropriate default period—examination of means of offender before imposing financial penalty.*

A fine and default period of imprisonment were set aside, the fine being excessive given the offender's means, the time to pay too short and the default period too long. The need to enquire into an offender's ability to pay before imposing a fine was emphasised.

D

No cases were referred to.  
The parties did not appear.

TUIVAGA C.J.:

Judgment

E

On 7th February 1983 the respondent, who was not represented, was convicted on her own plea in the Suva Magistrates Court of one count of loitering in a public place for the purpose of prostitution, contrary to section 8 of the Minor Offences Act.

F

On the night in question the respondent was observed approaching people outside the Regal Cinema for about one hour. At about 8.30 she went to a taxi in which a passenger was already seated. She entered the taxi which was about to move off when it was stopped by a police officer. She was questioned and admitted being on her way to an hotel and having asked for \$5. She was taken to the Police Station and charged.

G

The respondent has one previous conviction for loitering for which she was fined \$40 or 40 days' imprisonment in default. In mitigation she merely stated that one of her sisters was working and would pay her fine. The trial Court imposed a fine of \$80 or 80 days' imprisonment in default and allowed seven days to pay.

H

Having considered the circumstances and nature of the offence under review I am satisfied that the fine imposed on this respondent was too heavy, that the default period was too long and that the time given to pay too short. It is well established that a court should not usually impose a fine without first enquiring and satisfying itself as to the offender's ability or means to pay. In the absence of such an enquiry it is more than possible that an offender will be unable to pay a fine in time or at all and will, in default, have to serve a sentence that the Court originally decided not to impose namely, imprisonment. In the present case the

default period was only ten days short of the maximum three months' imprisonment that can be imposed for this offence but there is no record of any enquiry of the offender's means having been made. Even with the help of working sister it means highly unlikely that a woman reduced to prostitution as a means of subsistence would legitimately be able to find \$80 within seven days. Where a default period of imprisonment is imposed there is no need for it to be longer than the minimum required to encourage payment of the fine. The question of allowing time to pay and the length of time to be given should invariably be the subject of representations by the offender. A B

As is clear from the title of the Act, loitering for the purposes of prostitution is essentially a minor offence and should, in the absence of aggravating factors, be approached by the courts on that basis. In the present case there was an absence of such aggravating factors and in particular there was nothing to suggest that the respondent was making a nuisance of herself by, for example, aggressively accosting passers-by and soliciting their patronage. C

The sentence imposed upon the respondent is quashed and in substitution therefor respondent is sentenced to a fine of \$20 in default ten days' imprisonment. The fine must be paid within fourteen days with effect from today.

I would hope that this Order on Revision will serve as a fair guide to the way this type of case should be approached. D

*Sentence varied.*