



How Criminal Is It to Rape a Partner According to the Justice System? Analysis of Sentences in Spain (2015–2022)

J.M. Tamarit Sumalla¹ · P. Romero Seseña¹ · L. Arantegui Arràez¹ · A. Aizpitarte¹

Accepted: 15 March 2023
© The Author(s) 2023

Abstract

Sexual violence in an intimate relationship is a less studied phenomenon than other forms of intimate partner violence, despite data pointing to a high prevalence. Studies on how the cases are sentenced are scarce. Until recently, many laws did not allow marital rape to be punished as a crime of rape, and some studies showed a tendency for the courts to punish these cases less severely. The present study is based on an analysis of 964 rape cases of adult women in Spain. All the information was extracted from sentences of the Provincial Courts issued between 2015 and 2022. Results showed that significantly lower conviction rates and less severe penalties were imposed when the rape was committed by the intimate partner compared to other rape cases where the offenders were not partners (family members, acquaintances, or unknown strangers). The practical implications of these results in several areas are discussed.

Keywords Sexual offenses · Rape · Sexual assault · Judicial decision · Intimate partner sexual violence · Criminal justice system

Introduction

Sexual violence within intimate relationships has been a socially invisible phenomenon until recently. The perception of sexual violence has been largely conditioned by the stereotype of “real rape,” the one committed by an unknown man against a young woman (Waterhouse et al., 2016). Nowadays, the idea that sexual offenders are very often known by the victim and may even belong to her intimate or family environment, as well as situations of *date rape*, are more commonly accepted. But sexual violence against a person with whom sexual intimacy is usually shared in a continuous relationship of coexistence, poses undeniable challenges, amongst which are criminal evidence issues.

Moreover, social progress has led to the belief that rape within an intimate partner relationship should deserve the same court’s censure as rape committed outside of that context. The legal norms that, in many countries, granted immunity or a more lenient response to

✉ P. Romero Seseña
promerose@uoc.edu

¹ Studies of Law and Political Sciences, Open University of Catalonia, Rambla del Poblenou, 156, 08018 Barcelona, Spain

marital rape, or even excluded this kind of aggression from the legal concept of rape, have been overturned. In Spain, where there has been no such kind of written regulations in recent history, it is even possible to consider that rape within a couple relationship can be assessed as more serious under the Criminal Law.

The policies adopted in Spain to fight gender-based violence against a partner or ex-partner and most studies on this subject have generally focused on physical and psychological violence, leaving sexual violence out. As a consequence of the Organic Law 1/2004, of December 28, the Spanish Penal Code (SPC) incorporated rules imposing mandatory increased penalties for those who committed injuries, violence, threats, or coercion, not on crimes against sexual freedom and indemnity.

The criminal law in force in Spain did not contain any specific provision regarding the commission of a sexual offense within an intimate partner relationship. Article 180-4 of the SPC included a qualified criminal definition providing an increased penalty for the crime of sexual aggression only when the offender is an ascendant, descendant or sibling of the victim. However, among the general circumstances to be taken into account in determining the penalty, Art. 23 provides that when the victim is the spouse or a person who is, or has been, stably linked to the offender by an equivalent emotional relationship, the court can consider this circumstance as an aggravating or mitigating factor, having also to ponder the nature, the motives, and the effects of the crime. Although the usual criterion for attributing aggravating effects to this circumstance in sexual crimes is rarely questioned, there are actually many cases in which the courts fail to apply this circumstance (Tamarit et al., 2022). In addition, and unlike the crimes included in Articles 153 or 173-2 SPC, the rule requires the note of stability in the relationship.

This situation has changed following the passage of the *Organic Law 10/2022 on the integral guarantee of sexual freedom*. A new definition of the crime of sexual aggression has been introduced in the Penal Code, by which any sexual act without consent should be subsumed in this legal typology (Art. 178 SPC). According to this, the penalty must be compulsorily aggravated when the victim is, or has been, the wife or a woman with an analogous relationship, even without coexistence (Art. 180,1). It also must be taken into account that in the aggravating circumstance of Art. 22-4, Organic Law 1/2015, of March 30, added “gender reasons” to the discriminatory grounds, which the courts have applied in cases of sexual assault committed by men against women with whom they had a relationship.

As for procedural issues, Organic Law 1/2004 did include crimes against sexual freedom and indemnity by establishing the list of offenses whose investigation is attributed to the Courts of violence against women (Art. 44-1) “when they have been committed against whoever is, or has been, his wife, or a woman who is, or has been, linked to the author by a similar affective relationship, even without having lived together.” An essential aspect of forensic practice is the exemption from the obligation to testify, as stipulated in Art. 416 of the Law of Criminal Procedure. According to this, the relatives in direct ascending and descending lines and the spouse or equivalent person by means of their relationship are exempt from the obligation to testify against the person under investigation. This exemption also applies to victims of crimes that have not been party to the criminal case, even if they have reported the incident.

The present study will focus on rape cases against women. Rape is defined in Article 179 of the SPC as the attack against the sexual freedom of another person committed through violence and intimidation, “when it consists of carnal access to the vagina, anus, or mouth, or the introduction of body parts or objects by any of the two first aforementioned ways.”

The penalty provided by the law in force at the time of this study (between 2015 and June 2022) was 6 to 12 years of imprisonment. An alternative penalty was not legally stipulated. The Courts were allowed to impose a prison sentence of less than 6 years only when a qualified mitigating circumstance was applied. Imprisonment of 12 to 15 years could be imposed as long as a specific qualified typology was considered.

The competent authority to judge all crimes of rape are the collegial bodies, made up of three magistrates in the Provincial Courts. After a summary of previous studies on the subject and an overview of the Spanish context, the objectives of the study, the methodological aspects and the results obtained will be presented. Finally, we will draw our conclusions and offer some recommendations.

Previous Studies

The International Context

Many studies have been carried out at the international level, on intimate partner sexual violence. After a systematic review of the literature, Barker et al. (2019) concluded that intimate partner sexual violence is a common but often overlooked form of intimate partner violence that may have unique consequences for those who experience it. Compared with other forms of violent victimization, it is associated with greater risk of posttraumatic stress disorder and depressive symptoms, substances abuse, suicidality, somatic symptoms, sexual health problems, specific physical injuries, and death by homicide.

Empirical research has revealed that sexual victimization within the intimate partner context is highly prevalent, with the risk of suffering sexual violence from a partner being even higher than from other people. According to the UK National Victimization Survey, intimate partner rape accounts for at least half of rapes, and the proportion of this type of rape has been increasing (Breiding et al., 2014; Hester & Lilley, 2017).

A study by Breiding et al. (2014), using data from the 2012 National Intimate and Sexual Violence Survey in the USA with 14,155 interviews, representative of the national population, found that the lifetime prevalence of rape by an intimate partner was 8.8% for women and 0.5% for men. There was a 12-month prevalence of 0.8% for women. An estimated 15.8% of women and 9.5% of men experienced other forms of partner sexual violence in their lifetime, and 2.1% of both men and women in the last 12 months.

A more recent study by Peterson et al. (2021), from the 2012 edition of the aforementioned survey, has revealed that 142 million adults nationwide have experienced sexual violence or stalking, 85% of them by someone with whom they had a relationship. This percentage was higher in men than in women (90% and 80%, respectively). Many of these victims (women to a greater extent) also suffered violence from acquaintances, strangers, or relatives, which leads the authors to point out the importance of addressing the problem of polyvictimization.

However, to date, empirical research has hardly dealt with analyzing the judicial response to this specific sphere of sexual violence. Published studies are scarce at the international level and non-existent in Spain. Most of them come from Anglo-Saxon countries, where the conviction rate has been found to be lower for rape committed in the domestic sphere, especially when compared to rape perpetrated by unknown offenders (Rumney et al., 2016; Hester and Lilley, 2017). This “justice gap,” in terms of what Lonsway and Archambault (2012) define as the criminal justice system’s inability to effectively respond

to sexual assault, has been considered particularly wide in England and Wales, where only 7.5% of the reported cases of rape end with a conviction. Rapes committed by known people tend to be reported more, but the percentage of convictions is lower. Walker et al. (2021) have found that the probability of cases reaching the criminal justice system ending in a conviction is conditioned by the age and sex of the victims, being higher when they are younger and when they are women, although a conviction is more often reached in crimes less serious than rape.

Rape in the context of an intimate partner relationship has traditionally received a different judicial response from other sexual assaults. In Anglo-Saxon countries, it was not even acknowledged as a crime of rape until the 1970s, since rape used to be defined as a sexual assault committed on a person, or specifically a woman, other than the wife. The *marital rape exemption*, which emerged in Massachusetts in 1857 and caused controversy throughout the 1980s in common law countries, exempted husbands who raped their wives from any responsibility. Its abolition in the United States led in some cases to the provision of the *marital rape allowance*, which mitigated the penalty and continued to guarantee the right of the husband to rape his wife in certain circumstances (Sitton, 1993). As an example of a conception rooted in society almost to this day, it is worth taking into account the phrase that the Women's History Research Center of Berkeley (California) attributed to Californian Senator Bob Wilson, in a 1979 speech: "But if you can't rape your wife, who[m] can you rape?" (Freeman, 1981).

An immunity that now can be considered contrary to human rights was then seen as a consequence of the contractual nature of marriage, which compelled the wife to comply with the husband's will and fulfil her "conjugal duty," submitting to his sexual requests (Kricken, 2019). At the end of the twentieth century, marital rape began to receive the same treatment as other violations in most legislations (Tracy et al., 2012), although Richardson (2020) warns that there are still 35 jurisdictions within the Commonwealth that have some form of *marital exemption* in their penal codes.

In the UK, the Milberry case (2002) introduced significant changes. It was a crime of homosexual rape in which the 17-year-old perpetrator raped a 15-year-old boy, taking advantage of the trust generated by their friendship. Following this case, on May 24, 2002, the Sentencing Advisory Panel proposed to the criminal division of the England and Wales Court of Appeal a review of the guidelines to be used in sentencing rape offenses. The Court's decision marked a tendency to condemn sexual assaults in couples as rape. In addition, the Sentencing Advisory Panel increased the minimum penalties for rape cases, despite there still being room for mitigating circumstances that could only be applied in cases of intimate partner rape¹ (Rumney, 2003).

Regardless of the written law, studies in Anglo-Saxon countries indicate that judicial decisions tend to consider marital rape (or equivalent partner relationship) as less severe than that committed by another family member or a stranger (Kennedy et al., 2009; McCormick et al., 2016). In a study based on 186 sexual assault cases in Canada, Du Mont et al. (2006) found that strangers received longer sentences than intimate perpetrators. Even within the couple, less seriousness is attributed, also when there is coexistence (Rumney, 1999; Warner, 2000). One of the most frequently mentioned factors to substantiate the unique seriousness of this crime is the fact that the trust the victim had placed in their

¹ This body, which makes recommendations for the unification of the penalties imposed by the criminal courts, indicated that "in the context of a marital rape, the penalty can be mitigated when the offender has suffered an unusual degree of provocation or stress created by his relationship with the victim."

partner is broken. However, the breach of trust, which is recognized as an aggravating circumstance in rapes committed by other family members, is not invoked with the same frequency when the rapist is the spouse or victim's partner (Easteal et al., 2005). The authors highlighted that some judges have explicitly argued that partner rape is clearly less severe than stranger rape. Over time, it seems that the judges have become more aware of the seriousness of this crime, as well as the harmful and lasting effects on the victims. Still, the judicial decisions do not yet reflect this apparent change of vision, which may be contemplated in the motivation of the sentence, but not in the imposed sentence itself (Kennedy et al., 2009).

Until recently, several European penal codes had rules that excluded marital rape from the typical scope of rape. As such, in Germany, until the legal reform of 1977, sexual assaults against a spouse were classified as coercion, not rape, with a lower penalty. In Denmark, the legal change occurred in 1960 and in Sweden in 1963, while in Austria, the exclusion of marital rape did not come until 1989 (*Deutscher Bundestag*, 2008). In Norway, marital rape was legally equated to extramarital rape in a 1974 ruling; in Belgium, through legal reform in 1989, and in the United Kingdom, it materialized in the Sexual Offenses Act of 2003.

As for the law being effectively applied by judges, in a study of 364 cases sentenced in the Flanders region (Belgium), Bielen et al. (2020) found that despite the legal comparison between rapes against a partner and those that occurred outside this context, the offenders who are the husbands or partners of the victims receive considerably lower sentences than the strangers. This was concluded after having controlled for variables that have made it possible to compare acts committed in similar circumstances. The authors interpret the results as a symptom of slowness of the judicial system in the assumption of social and legal changes in the context of the broad discretion they have when setting the punitive response.

The Spanish Context

Studies on this phenomenon have been scarce in Spain. Graña et al. (2013), by means of a survey on self-reported crime and victimization with a sample of 4660 adults, found that 19.3% of men and 10.6% of women had committed acts of sexual violence (in the broad sense of the concept) against their partners, while 17.4% of women and 11.1% of men had experienced victimization in the same context. In samples of adolescents and young adults, the prevalence of intimate partner sexual violence was also found to be high: according to a study by Fernández González et al. (2014), with a sample of 2,016 informants, 27.1% of boys and 10.9% of girls had committed sexual violence, while 20.9% and 17.3% respectively reported victimization. Other studies have been conducted, providing similar results (Cuenca and Graña, 2020).

Regarding official data, a 2019 report from the *Ministerio del Interior* (Home Office) on sexual crimes reveals that the number of sexual assaults with penetration (rape) reported throughout the State increased progressively from 2016 (1,249) to 2019 (1,873), in a context of increased reported sexual delinquency, which is only a small part of the actual number of cases. If underage victims are excluded, the total number of adults who reported this type of sexual victimization in 2019 was 1260, the vast majority of whom were women (99%), with more than half of them between the ages of 18 and 30 (681). Concerning the previous relationship with the offender, in 75% of cases, it was a stranger, and in only 4.5% it was a partner or ex-partner of the victim. Regarding the characteristics of the offenders,

the Report reveals that 65% of those arrested and investigated for rape were Spanish and 35% were foreigners.

With regard to victimization surveys, the last edition of the macro-survey on violence against women, referring to 2019 (*Delegación del Gobierno contra la violencia de género, 2020*), collected data from a representative sample of women over the age of 16 residing in Spain ($n = 9568$). As far as partner sexual violence is concerned, 8.9% of women who had had a partner stated that they had suffered sexual violence by a current or ex-partner at some point in their life. The percentages vary greatly depending on whether it was a current partner (1.9%) or a former partner (13.3%).

Within the intimate partner context, rape (defined as the partner forcing the victim to have sexual relations, which implies a broader concept of rape than the legal one) was the most frequent situation of sexual violence (6.7% of the women who had had a partner), followed by non-consensual fondling (5.4%), and engaging in sexual relations due to the victim's fear of the rejected partner's reaction (5.2%). The macro-survey concludes that 7.5% of women (about 1,535,941) had been raped at some point in their lives by partners or ex-partners, and 0.9% (176,741) had suffered rape in the last 12 months. In the case of ex-partners, 88.8% of the women stated that sexual violence occurred more than once. The percentage was 86.2% in the case of a current partner, but the frequency reported was lower. As for the offenders, 58.1% of those who had sexually assaulted their current partners were 55 years old or older, compared to 39.6% of non-aggressors. On the other hand, 83.2% of the offenders were born in Spain and 16% in another country, compared to 88.1% and 11.8% (respectively) of the non-aggressors. The vast majority (96.9%) of the women who had suffered physical and/or sexual violence from a current or ex-partner stated that they had also suffered some type of psychological violence (mainly emotional, but also control, economic, or fear). In other words, psychological violence was always present in relationships with physical and/or sexual violence. Furthermore, almost half (46.6%) of women who had suffered physical and/or sexual violence from a current or past partner within their lifetime had also experienced injuries as a result of this violence (23.3% of them inflicted by the current partner and 49.4% by a former partner)².

Finally, the survey revealed that 2.2% of all women aged 16 and over had been raped by someone who was not (and had never been) their partner. These figures are lower than those mentioned previously about rape within the couple, which shows that partners and ex-partners are associated with a higher risk of sexual violence for the victim.

The Present Study

The main goal of this study was to find out how criminal courts dealt with intimate partner rape cases. More specifically, we aimed to explore whether there were any differences between the court decisions, depending on the type of victim-offender relationship (partner or ex-partner vs. non-partner). The non-partner individual could be a relative, an unknown

² The survey collected data about reporting. Cases of physical and/or sexual partner violence had been reported by 32.1% of the victims (12.5% in the case of a current partner and 34.3% in the case of past partners). The reasons for not reporting, in the case of a current partner, were the victim having resolved the conflict by herself (47.2% of the cases) and not giving importance to the incidents (37.3%). Among the rest, 11.4% did not do it out of shame, and 10.6% out of fear of the aggressor. In the case of ex-partners, the percentages were 48.5%, 32.1%, 16.6%, and 15.6%, respectively.

stranger, or an acquaintance of the victim. Additionally, the research explored to what extent the judicial response to cases charged as rape were influenced by the legal rules which judges are bound to, as well as extralegal elements. These elements included the victims' and offenders' characteristics, the circumstances of the crime, the consequences to the victim, and even certain particularities of the court itself. In particular, the analysis focused on the influence of such legal and extra-legal factors on the decision to convict or to acquit, and in determining the length of imprisonment and civil liability amount for a sample of cases of rape committed by men against women in Spain.

Thus, the research questions were the following:

1. What are the main characteristics of rape cases against adult women committed by a past or current intimate partner?
2. Are there any differences in the conviction rate, based on the victim-offender relationship (partner or ex-partner vs. non-partner)?
3. When a conviction sentence is imposed, are there any differences in the length of imprisonment and the compensation amount between rapes committed in the context of a past or current intimate relationship and other rape cases committed by non-partner offenders?
4. Which legal and extra-legal factors influence the judicial response (conviction vs. acquittal, prison length and civil liability) in rape cases?

Method

Procedure

Sentences imposed by the Spanish Provincial Courts within the period of 2015-2022³ were consulted using the *Centro de Documentación Judicial (CENDOJ)* of the *Consejo General del Poder Judicial (CGPJ, General Council of the Judicial Power)*⁴ open access database. The case selection included all cases prosecuted in first instance (therefore, appeal cases were excluded) for the crime of rape (Art. 179 SPC). According to the information provided by the CENDOJ, the available data includes all sentences from the Provincial Courts issued in Spain during the studied period. The existence of missing data (i.e. not all sentences provide the same amount of details) can be considered as a limitation, but variables with a higher number of missing data (such as victim's age or origin) have been excluded from the analysis to avoid bias in the estimations. Considering that all the data analyzed comes from public sources, this research was not required to undergo an institutional ethics committee evaluation. The authors take responsibility for the integrity of the data, the accuracy of the data analysis, and have made every effort to avoid inflating statistically significant results.

Sample

The sample was composed of 964 cases, considering as analysis unit any alleged victim that had filed a charge for a crime of rape as a case. The selected victims were all adult women (> 18 years old), although it was not possible to know the exact age of the victim in most cases.

³ The period of study is comprised between January 1, 2015, and June 30, 2022.

⁴ General Council of the Judicial Power.

Regarding the offenders, 99.7% were men ($n = 961$), and 0.3% were women ($n = 3$), with an average age of 36.51 years old ($SD = 11.49$). Most of them were of foreign origin (48.2%, $n = 465$), vs. 41.9% of Spanish-born offenders ($n = 404$). As for the rest of the cases (9.9%, $n = 95$), no information about their origin was found. Also, amongst the selected cases, 37% of them were rapes committed by a partner or ex-partner ($n = 357$), 17.6% committed by an acquaintance ($n = 170$), 22.7% perpetrated by a stranger ($n = 219$), and 20.9% ($n = 201$) inflicted by relatives of the victim (see Table 1).

Statistical Analysis

Statistical analysis was carried out using SPSS 24.0 software. Four different types of analysis were conducted: first, descriptive and frequencies analysis; second, covariance analysis (ANCOVA) and contingency tables; third, binary logistic regression analysis (conviction vs. absolution as the categorical variable of analysis); and fourth, multiple regression analysis (length of imprisonment and amount of compensation as quantitative dependent variables).

Descriptive and frequencies analysis were meant to describe the sample of participants (victims and offenders) and the rest of the studied variables (legal and extra-legal factors). First, contingency tables were created to analyze if there were differences in the conviction vs. acquittal rates depending on the type of victim-offender relationship (using the Bonferroni test). Secondly, mean comparisons were carried out through the covariance analysis (ANCOVA) to explore the differences in the average length of prison term (months) and in the amount of civil liability, considering the various independent legal and extralegal variables. In order to analyze the effect of the extra-legal variables, all the legal variables were controlled, introducing them in the analysis as covariates. The covariates included were degree of execution, continuing offense, mitigating and aggravating circumstances, since these are legally defined as factors that the judges must take into account when they determine the length of the prison sentence. To analyze the differences between the means of the extra-legal variables in terms of compensation, the degree of execution and continuing offense were included as covariates. The effect size was also performed using Cohen's d index. Thirdly, binary logistic regression models were conducted to determine those variables that have explanatory value in the main judicial decision (i.e., conviction vs. acquittal). Finally, multiple regression analysis were carried out to explain the variance in the length of prison sentence (in months) and the compensation amount (in euros). Specifically, two explanatory models were developed, one for the length of prison sentence and another for compensation. Each of these models includes a series of legal and extra-legal variables that contribute to the explanatory weight of the two dependent variables. In order to avoid bias and to focus the analysis on the assessment of the judicial decision-making, cases that have resulted in a conviction throughout a plea bargain process ($n = 51$) have been excluded from the regression models for a total n of 632 cases ($n = 632$) in the imprisonment length model and 558 cases ($n = 558$) in the economic compensation model.

Results

Descriptive Statistics

Of the 964 cases prosecuted, 90.1% were consummated crimes and only 9.5% of the cases were classified as continuing crimes. The cases in which the circumstance of kinship was

Table 1 Descriptive analysis: tried cases for women victims of rape and women victims of rape committed by a partner/ex-partner

Variables	Total sample, <i>N</i> = 964		Subsample partner/ ex-partner, <i>n</i> = 357	
	<i>n</i>	%	<i>n</i>	%
Variables of judicial resolution				
Ruling (5 categories)				
Conviction sentence	639	66.3	206	57.54
Conviction by plea bargain	51	5.3	17	4.75
Acquittal sentence	270	28.0	134	37.71
Accusation withdrawal	1	0.10	0	0
Exculpatory with security measures	3	0.3	0	0
Ruling (2 categories)				
Conviction	690	71.6	223	62.5
Acquittal	189	28	134	37.5
Plea bargain (of convicted)				
Yes	51	7.4	17	7.6
No	639	92.6	206	92.4
Imprisonment (of total <i>N</i>)				
Yes	662	68.74	211	59.1
Yes, conjunction of crimes	21	2.18	6	1.7
No	280	29.08	140	39.2
Imprisonment (of convicted)				
Yes	662	95.9	211	97.3
Yes, conjunction of crimes	21	3.0	6	2.7
No	7	1.0	6	2.7
Civil liability (of total <i>N</i>)				
Yes	609	63.2	183	51.3
No	355	36.8	174	48.7
Civil liability (of convicted)				
Yes	604	87.5	183	82.1
No	86	12.5	40	17.9
Civil liability for physical harm				
Yes	295	30.6	84	23.5
No	511	53.0	195	54.6
n/a	158	16.4	78	21.8
Civil liability for moral harm				
Yes	536	55.6	156	43.7
No	269	27.9	123	34.5
n/a	159	16.5	78	21.8
Legal variables				
Degree of execution				
Attempted	92	9.9	15	4.20
Consummated	869	90.1	342	95.80
Continuing offense				
Yes	92	9.5	46	12.89
No	867	89.9	311	87.11

Table 1 (continued)

Variables	Total sample, <i>N</i> = 964		Subsample partner/ ex-partner, <i>n</i> = 357	
	<i>n</i>	%	<i>n</i>	%
n/a	5	0.5	0	0
Mitigating Circumstance Art. 21 SCP				
Yes	136	14.1	46	12.9
No	692	81.8	246	68.9
n/a	136	14.1	65	18.2
Aggravating Circumstance Art. 22 SCP				
Yes	94	9.8	16	4.5
No	735	76.2	49	77.3
n/a	135	14.0	65	18.2
Qualified Mitigating Art. 21-1 SPC				
Yes	24	2.5	5	1.4
No	806	83.6	287	80.4
n/a	134	13.9	65	18.2
Mixed circumstance				
Kinship Clause Art. 23 SPC				
Yes	110	11.4	81	22.7
No	718	84.5	211	59.1
n/a	136	14.1	65	18.1
Extra-legal variables				
Offender nationality				
Spanish	404	41.9	176	49.3
Foreign	465	48.2	138	38.7
n/a	95	9.9	43	12.0
Offender gender				
Man	961	99.69	357	100
Woman	3	0.31	0	0
Victim nationality				
Spanish	40	4.1	23	6.4
Foreign	64	6.6	20	5.6
n/a	860	89.2	314	88.0
Victim-offender relationship (4 categories)				
Partner/ex-partner	357	37.0	-	-
Relative	201	20.9	-	-
Acquaintance	170	17.6	-	-
Unknown	219	22.7	-	-
n/a	17	1.8	-	-
Victim-offender relationship (2 categories)				
Partner/ex-partner	357	37.0	-	-
Non-partner	590	61.2	-	-
n/a	17	1.8	-	-
Private prosecution				
Yes	649	67.3	283	79.3

Table 1 (continued)

Variables	Total sample, <i>N</i> = 964		Subsample partner/ ex-partner, <i>n</i> = 357	
	<i>n</i>	%	<i>n</i>	%
No	310	32.2	71	19.9
n/a	5	0.5	3	0.8
Province				
Rural	532	55.19	201	56.3
Urban	432	44.81	156	43.7
Court composition: women majority				
Yes	337	35.0	133	37.3
No	627	65.0	224	62.7
Reporter magistrate: gender				
Man	599	62.14	216	60.5
Woman	365	37.86	141	39.5
President: gender				
Man	704	73.03	248	69.5
Woman	260	26.97	109	30.5
Court composition: number of women				
None	209	21.70	82	23.0
1 Woman	418	43.30	142	39.8
2 Women	271	28.14	104	29.1
3 Women	66	6.85	29	8.1
Physical impact				
Yes	592	61.4	198	55.46
No	371	38.5	159	44.54
n/a	1	0.1	0	0
Emotional impact				
Yes	299	31.0	106	29.69
No	662	68.7	251	70.31
n/a	3	0.3	0	0
Psychological impact				
Yes	334	34.6	112	31.37
No	627	65.0	245	68.63
n/a	3	0.3	0	0
Material impact				
Yes	70	7.3	8	2.2
No	887	92.0	347	96.9
n/a	66	6.85	3	0.8

applied were 110 (11.4%). In 136 (14.1%), an attenuating circumstance according to the Spanish criminal law (SPC) was found, in 94 (9.8%) an aggravating circumstance, and in 24 (2.5%) a qualified mitigating circumstance. In the majority of cases (592, 61.4% of the total sample), the sentence stated that the act had a physical impact on the victim, in 334

(34.6%) a psychological impact, in 299 (31%) an emotional impact, and in 70 (7.3%) a material impact. For more detailed information, see Table 1.

Most cases (690) resulted in a conviction sentence (71.6% of the total), the majority of them following a trial, and only 5.3% by plea bargain (conformity sentence). Almost all (99%) convictions received a penalty of prison, with an average length of 91.06 months ($SD = 46.35$). Compensation, as a consequence of civil liability, was issued in 609 cases (88.3%), with an average amount of 16,145 euros ($SD = 19,015$).

Among the tried cases of rape by a partner or ex-partner ($n = 357$), the percentage of consummated crimes reached 95.8%, while 87.1% were not continuing crimes. Also, half of the defendants were of Spanish origin (49.3%) and physical impact on the victim was explicitly stated in 55.5% of cases. Emotional and psychological effects were stated in less cases (31.4% and 29.7%, respectively). The circumstance of kinship was found in 81 cases (22.7%). Some mitigating circumstance was found in 12.9% and some aggravating circumstance in 4.5%. In 79.3% of cases, the criminal process had private prosecution (see Table 1).

We also created contingency tables to find out whether there were differences in the proportion of convicted and absolved cases, based on the victim-offender relationship. Significant differences were found ($\chi^2(1) = 30.80, p = .000$). In the group of intimate partner or ex-partner offenders, cases with a conviction sentence were lower (62.5%) compared to the non-partners (79.1%). When we considered the victim-offender relationship variable in its four categories, the differences remained significant ($\chi^2(3) = 49.01, p = .000$). More specifically, partner or ex-partner had a significantly lower conviction rate (62.5%) compared to relatives (76.5%) and strangers (88.6%). However, differences with the acquaintances were not significant (69.9%).

Covariance Analysis (ANCOVAs)

To analyze the mean differences in the extra-legal variables affecting the length of imprisonment, we controlled all the legal variables, introducing them in the analysis of variance as covariates: degree of execution, continuing offense, mitigating, aggravating, and qualified mitigating circumstance. Results showed several significant differences in the average length of the prison term with regard to some extra-legal variables. Concerning the victim-offender relationship, the prison term was lower when rapes had been committed within an intimate partner relationship (83.4 months), compared to cases in which the offender was an acquaintance (87.8), a family member (96.5 months), or a stranger (98.7 months). The results for the dichotomous variable of victim-offender relationship are similar (83.6 months for rapes committed within the intimate partner relationship and 95.1 months for those committed by non-partners). Also, the prison sentence was significantly higher when there was an emotional or psychological impact on the victim (86.4 vs. 98.6 and 85.4 vs. 98.6, respectively).

All legal factors differ significantly concerning the length of imprisonment. That is, consummated crimes, continuing offenses, those without attenuating circumstances or a qualified mitigation, and those with aggravating circumstances or the mixed circumstance of kinship got significantly longer prison sentences (see Table 2).

Regarding the influence of the victim-offender relationship on civil liability, significant differences were found, even when controlled by degree of execution and continuing crime. The compensation amount imposed on partner or ex-partner offenders was

Table 2 Variance analysis for the length of imprisonment in months and compensation amount in euros

Independent variables	Dependent variables				Compensation (€), <i>n</i> = 609			
	<i>M</i>	<i>F</i>	<i>p</i>	<i>d</i>	<i>M</i>	<i>F</i>	<i>p</i>	<i>d</i>
Prison (months), <i>n</i> = 683								
Legal								
Degree of execution								
Attempted	52.32	69.27	.000***	0.97	12,515	3.11	.078	0.22
Consummated	96.39				16,671			
Continuing offense								
Yes	133.8	59.90	.000***	0.87	21,669	5.29	.022*	0.31
No	86.86				15,595			
Mitigating circ.								
Yes	76.33	17.63	.000***	0.43	14,736	.845	.358	0.09
No	95.04				16,544			
Aggravating circ.								
Yes	122.8	60.23	.000***	0.70	21,495	7.99	.005**	0.27
No	86.35				15,300			
Qualified mitigating								
Yes	72.13	4.23	.040*	0.27	19,355	.54	.462	0.12
No	91.90				16,085			
Mixed circumstance								
Kinship clause								
Yes	106.6	13.84	.000***	0.42	14,983	.43	.512	0.08
No	88.27				16,392			
Extra-legal								
Offender nationality								
Spanish	93.49	0.89	.346	0.12	15,393	.72	.398	0.05
Foreign	90.36				16,752			
Victim nationality								
Spanish	82.69	2.61	.112	0.22	16,708	.155	.696	0.00
Foreign	99.41				19,198			
V-O relationship (4 cat.)								
Partner/ex-partner	83.44	5.51	.001**	0.33	12,575	3.20	.023*	0.3
Relatives	96.53				18,308			
Acquaintance	87.75				18,010			
Stranger	98.72				17,258			
V-O relationship (2 cat.)								
Partner/ex-partner	83.58	11.08	.001**	0.25	12,572	9.37	.002**	0.29
Non-partner	95.07				17,778			
Private prosecution								
Yes	91.94	0.29	.589	0.17	14,107	1.29	.255	0.41
No	90.07				16,579			
Province								
Rural	92.05	.317	.574	0.04	16,145	.001	.976	0.00
Urban	90.25				16,195			
Court women majority								

Table 2 (continued)

	Dependent variables				Compensation (€), <i>n</i> = 609			
	Prison (months), <i>n</i> = 683							
Yes	94.78	2.63	.105	0.07	18,113	3.70	.055	0.16
No	89.39				15,049			
Reporter magistrate								
Man	89.07	3.03	.080	0.12	15,293	1.89	.169	0.11
Woman	94.74				17,453			
President gender								
Man	91.82	0.33	.570	0.04	15,634	1.17	.278	0.09
Woman	89.80				17,477			
Physical impact								
Yes	91.55	.084	.772	0.05	16,599	.868	.352	0.05
No	90.52				14,952			
Emotional impact								
Yes	98.58	12.90	.000***	0.45	20,587	21.76	.000***	0.4
No	86.67				13,246			
Psychological impact								
Yes	98.64	17.02	.000***	0.42	21,338	39.69	.000***	0.51
No	85.44				11,870			
Material impact								
Yes	110.5	15.30	.000***	0.49	20,113	3.05	.081	0.19
No	89.37				15,706			

For the imprisonment length analysis only cases with a prison sentence have been included. Likewise, for the civil liability amount analysis, only cases with a civil liability resolution have been included. Regarding the size effect interpretation (Cohen's *d*), according to Cohen (1988), values are $0.20 < d < 0.50$ low; $0.50 < d < 0.80$ medium; $0.80 < d$ high

* $p < .05$, ** $p < .01$, *** $p < .001$

significantly lower (€12,575) than that imposed on strangers (€17,258), acquaintances (€18,010), or other family members (€18,308). When we analyzed the differences for the dichotomous variable (i.e., partner or ex-partner vs. non-partner), the results were very similar: compensation imposed on intimate partners was significantly lower (€12,572) than that for non-partner offenders (€17,778). Other factors that showed significant differences regarding civil liability in the same direction (lower compensation in rape cases committed against a partner or an ex-partner) were the emotional (€13,246 vs. €20,587) and psychological impact (€11,870 vs. €21,338), continuing offense (€15,595 vs. €21,669), and an aggravating circumstance (€15,300 vs. €21,495). See Table 2 for more details.

Binary Logistic Regression Analysis: Conviction vs. Acquittal

A binary logistic regression was conducted to examine whether the independent variables (i.e., legal and extra-legal factors) significantly affected the odds of getting a conviction or

Table 3 Logistic regression analysis for conviction vs. acquittal resolution ($N = 964$)

Variable	<i>B</i>	<i>SE</i>	χ^2	<i>p</i>	<i>OR</i>	95.00% CI
Province—rural/urban	− 0.52	0.09	0.53	.466	1.01	[0.99, 1.02]
Degree of execution—attempted/consummated ^a	− 1.71	0.63	7.23	.007*	5.51	[1.59, 1.63]
Continuing offense—no/yes	− 0.14	0.41	0.12	.728	0.87	[0.39, 1.94]
Court: women majority—no/yes	− 0.05	0.27	0.04	.850	0.96	[0.56, 1.62]
Offender nationality—Spanish/foreign	− .07	0.27	.064	.800	0.93	[0.55, 1.57]
V-O relationship—non-partner ^b /partner	0.69	0.269	6.65	.010*	2.00	[1.18, 3.39]
Mitigating circ.—no/yes	− 19.54	3096.17	0.00	.995	0.00	[0.00, Inf]
Aggravating circ.—no/yes ^a	− 2.70	1.05	6.64	.010*	0.07	[0.01, 0.52]
Kinship mixed clause—no/yes ^a	− 2.70	0.77	12.42	.000*	0.07	[0.02, 0.30]
Private prosecution—no/yes ^a	0.54	0.28	3.90	.048*	1.72	[1.00, 2.95]
Material impact—no/yes	− 18.45	4330.80	0.00	.997	0.00	[0.00, Inf]
Emotional impact—no/yes ^a	− 1.50	0.44	11.49	.001*	0.23	[0.09, 0.53]
Physical impact—no/yes ^a	− 0.88	0.27	11.04	.001*	0.42	[0.25, 0.69]
Psychological impact—no/yes ^a	− 2.08	0.44	22.42	.000*	0.13	[0.05, 0.30]

$\chi^2(8) = 245.95$. $p < .001$. Nagelkerke $R^2 = .49$. The reference category is “Conviction Yes/No.” When *B* is negative, it means that the second category of that variable increases the odds of conviction. When *B* is positive, the first category increases the odds of penalty. The predictive potential from the odds ratio generated by the model was accurate in 87.2% of the cases

* $p < .05$, ** $p < .01$, *** $p < .001$

sentence versus an acquittal. The reference category for this analysis was “conviction.” The overall model was significant, $\chi^2(8) = 245.95$, $p < .001$ (with a Nagelkerke R -squared of .49), suggesting that several independent variables had a significant effect on the odds of determining the result of the absolution vs. conviction variable.

The effect of the application of the legal circumstance of kinship was significant, $B = -2.70$, $OR = .07$, $p = .000$. The model showed that the “consummated crime” category increased the odds of conviction compared to the alternative category (attempted). The presence of an aggravating circumstance also increased the odds of conviction ($B = -2.70$, $OR = .07$, $p = .000$). The next factor (with the higher Betas) that predicted a conviction sentence was the declaration of psychological impact ($B = -2.08$, $OR = .13$, $p = .000$) followed by the degree of execution ($B = -1.71$, $OR = 5.51$, $p = .007$). We also found that the physical impact increased the odds of being convicted ($B = -.88$, $OR = .42$, $p = .001$). Finally, the model indicated that the victim-offender relationship influenced the decision of conviction or acquittal. We observed that when the offender was the intimate partner, the odds of him being convicted decreased ($B = .69$, $OR = 2$, $p = .010$). See Table 3 for more details.

Multiple Regression Analysis

A linear regression analysis was conducted to assess whether the independent variables (legal and extra-legal factors) significantly predicted the length of imprisonment and the compensation amount. The result of the linear regression model for the length of prison term was significant, $F(15,533) = 16.7$, $p < .001$, $R^2 = .32$, indicating that approximately 32% of the variance can be explained by the following variables (from the highest β to the lowest): continuing offense ($\beta = .845$, $p = .000$), execution degree (i.e., consummated)

Table 4 Multiple linear regression: months of imprisonment model ($n = 632$)

Variable	<i>B</i>	<i>SE</i>	β	<i>t</i>	<i>p</i>	95.00% CI
Execution—attempted/consummated ^a	38.05	5.45	.819	6.980	.000***	[27.34. 48.76]
Continuing offense—no/yes ^a	39.25	5.85	.845	6.708	.000***	[27.76. 50.75]
Mitigating circ.—no ^a /yes	- 11.35	4.33	-.244	- 2.623	.009**	[- 19.84. - 2.85]
Aggravating circ.—no/yes ^a	30.03	4.95	.647	6.064	.000***	[20.30. 39.76]
Qualified mitigating—no ^a /yes	- 17.10	9.76	-.368	- 1.752	.08	[- 36.28. 2.07]
Kinship clause—no/yes ^a	23.4	5.0	.504	4.678	.000***	[13.57. 33.22]
Offender—Spanish/foreign	- 1.42	3.47	-.031	- 0.410	.682	[- 8.25. 5.40]
Province—rural/urban	- 1.79	3.49	-.038	- 0.511	.609	[- 8.65. 5.08]
V-O relationship—non-partner ^a /partner or ex-partner	- 16.33	4.06	-.352	- 4.026	.000***	[- 24.30. - 8.36]
Private prosecution	- 3.28	3.92	-.071	- 0.836	.403	[- 10.98. 4.42]
Women majority—no/yes	5.10	3.52	.111	1.449	.148	[- 1.81. 12.01]
Physical impact—no/yes	- 3.83	3.86	-.082	- 0.992	.321	[- 11.41. 3.75]
Psychological impact—no/yes	12.59	3.75	.271	3.433	.001**	[5.23. 19.95]
Emotional impact—no/yes	5.11	3.70	.111	1.380	.168	[- 2.16. 12.38]
Material impact—no/yes ^a	19.19	5.67	.413	3.386	.000***	[8.06. 30.33]

Results: $F(15, 533) = 16.7$. $p < .001$. $R^2 = .32$. * $p < .05$, ** $p < .01$, *** $p < .001$

^aIncrease the likelihood of a longer imprisonment length

($\beta = .819$, $p = .000$), aggravating circumstance ($\beta = .647$, $p = .000$) and circumstance of kinship ($\beta = .504$, $p = .000$), material impact ($\beta = .413$, $p = .000$), the victim-offender relationship (i.e., non-partner) ($\beta = .352$, $p = .000$), psychological impact ($\beta = .271$, $p = .001$), and the absence of attenuating circumstance ($\beta = .244$, $p = .009$). See Table 4.

The results of the linear regression model for the compensation amount was found to be significant ($F(15,466) = 5.94$, $p < .001$, $R^2 = .154$), indicating that approximately 15.4% of the variance (in euros) could be explained by the following variables (from the highest β to the lowest): psychological impact ($\beta = .414$, $p = .000$), continuing crime ($\beta = .380$, $p = .001$), non-partner victim-offender relationship ($\beta = .262$, $p = .014$), emotional impact ($\beta = .261$, $p = .006$), participation of private prosecution ($\beta = .259$, $p = .013$) and the majority of the judges being female ($\beta = .184$, $p = .041$). See Table 5.

Discussion

The data extracted from Spanish Courts provided relevant information about how the Criminal Justice System handles rape cases committed within a current or past intimate relationship. These represent 37% of all rape cases tried by the Provincial Courts. This suggests a first gap in the prosecution of such crimes, because according to the last national victimization survey on violence against women (2019), most rape incidents were committed by a partner or an ex-partner. A second gap between actual and tried crimes can be found when considering the offenders' characteristics. The number of those with a foreign nationality (38.7% vs. 49.3 of Spanish nationality) exceeds the percentage of foreign offenders in the aforementioned survey (16%), which is similar to the rate of foreigners in

Table 5 Multiple linear regression: model for civil liability in € ($n = 558$)

Variable	<i>B</i>	<i>SE</i>	β	<i>t</i>	<i>p</i>	95.00% CI
Execution—attempted/consummated	3717.8	2568	.205	1.45	.148	[- 1328, 8764]
Continuing offense—no/yes ^a	6896.6	2747	.380	2.51	.001***	[1499, 12294]
Mitigating circ.—no/yes	- 398.7	2041	-.022	-.195	.845	[- 4410, 3612]
Aggravating circ.—no/yes	3944.1	2260	.217	1.745	.082	[- 497, 8385]
Qualified mitigating—no/yes	- 51.2	4849	.000	-.001	.992	[- 9579, 9477]
Kinship mixed clause—no/yes	- 946.5	2334	-.005	-.405	.685	[- 5533, 3640]
Offender—Spanish/foreign ^a	3033.5	1611	.167	1.883	.060	[- 132, 6199]
Province—rural/urban	- 1562.5	1623	-.086	-.962	.336	[- 4753, 1628]
V-O relationship—non-partner ^a /partner or ex-partner	- 4764.5	1939	-.262	- 2.457	.014*	[- 8574, - 955]
Private prosecution—no/yes ^a	4706.8	1889	.259	2.49	.013*	[995, 8418]
Women majority—no/yes ^a	3346.3	1629	.184	2.054	.041*	[145, 6548]
Physical impact—no/yes	635.0	1806	.035	.351	.725	[- 2914, 4184]
Psychological impact—no/yes ^a	7512.5	1726	.414	4.353	.000***	[4121, 10904]
Emotional impact—no/yes ^a	4745.4	1703	.261	2.787	.006**	[1399, 8091]
Material impact—no/yes	- 38.4	2519	-.002	-.015	.988	[- 4988, 4912]

Results: $F(15, 466) = 5.94$, $p < .001$. $R^2 = .154$

* $p < .05$, ** $p < .01$, *** $p < .001$

^aIncrease the likelihood of a higher civil liability

the general Spanish population. However, this gap is not attributable to particular characteristics of intimate partner sexual violence, as the differences are even higher in the total sample of rape cases (48.2% offenders of foreign background vs. 41.9% Spanish).

As for the conviction rate, the previous relationship between victim and offender has been found to be a relevant factor. Partners and ex-partners have less risk of being convicted, compared to other defendants (62.5% vs. 79.1%), particularly those who were relatives (76.5%) or unknown to the victim (88%). Significant differences have been found in both the bivariate and logistic regression analysis. This result is an indicator of a “justice gap” (Lonsway & Archambault, 2012; Walker et al. 2021), which affects victims’ intimate partner sexual violence. It represents an added barrier (after considering the gap previously mentioned) for victims to get a conviction sentence. A first cause of this lower conviction rate can be found in the legal exemption of the obligation to testify as a witness against a partner. Unfortunately the judgements provided us insufficient information to find out the actual impact of the legal exemption on the cases tried. A second cause would be related directly to the objectives of this study: judges might be more reluctant to convict severely when the case is perceived as far from a “real rape,” or when the Spanish legal system, with its mandatory minimum penalties, does not allow them to adapt the punishment to their view on the seriousness of the offense.

However, there is no available data at the moment that can neither confirm nor deny these hypothetical explanations. The judgments do not usually contain legal arguments whereby the judges explicitly conduct an assessment of the seriousness of an intimate partner rape as a particular case of rape. The finding of a significantly lower conviction rate for partners compared to family members is noteworthy, since some hypothetical

causes that can depress a decision to convict could be associated with a resistance to get the criminal justice system involved in family issues.

The study has provided relevant results concerning the penalty and compensation imposed on those who received a conviction sentence. Imprisonment length was significantly shorter for those who committed rape against a past or current intimate partner (83.4 months vs. 95.1 on average). This goes in the same direction as previous research conducted in other countries, which revealed that the courts tend to consider this kind of sexual violence less severe than rapes perpetrated against non-partner offenders (Du Mont et al. 2006; Kennedy et al. 2009; Eastaer et al. 2005; McCornick et al. 2016; Bielen et al. 2020). The bivariate analysis and the linear regression model have confirmed the statistical significance. The difference was also significant when the rape cases against partners were compared to those against (other) family members.

Compensation amounts were also lower when the victim of rape was a partner or ex-partner. Again, the reasons for this difference (which is significant both in the bivariate and multivariate analysis) are not mentioned explicitly in the judgments. This might be due to the belief that the psychological effects on the victim are less severe when the rapist is a partner or ex-partner. And, as a consequence, the affected persons may not need financial compensation to the same extent as other victims do, since the compensation must be paid by a person with whom, in many cases, an economic unity (or even dependence) exists.

A crucial point regarding the differences in the length of imprisonment is that the lesser severity perceived by the judges in the cases of an intimate partner rape seemed to have a stronger impact on the penalty chosen than the appreciation of the circumstance of kinship (Art. 23 SPC). This circumstance, typically considered an aggravating factor by the Courts, had only been applied in 22.7% of the cases of intimate partner rape sentenced, so for most cases, the intimate relationship between the victim and offender was actually considered (even when not explicitly acknowledged) as a mitigating factor. The reasons for not to consider the legal circumstance of kinship could not be known, since in most cases the prosecutor did not request it and the judges did not include any reference in the judgment in which it was explicitly mentioned the intimate relationship between the victim and the offender as an influential factor in the penalty. The model has confirmed the actual effect of the aforementioned legal circumstance, because when this was applied, the courts tended to increase the penalty. In summary, less severe punishments for intimate partner rapists are not a result of applying mandatory or even optional legal guidelines. It is important to point out that these results have been confirmed through multivariate analysis after controlling the influence by all legal factors.

Finally, the analysis has provided us with relevant information about the influence of legal and extra-legal factors on sentencing. The logistic regression model has revealed that judicial decision-making, with regard to determining the length of the prison term, was strongly conditioned by mandatory legal guidelines. The rules showed a higher predictability of legal factors than extra-legal ones and a larger effect size. Compared to the criminal punishment, the determination of the compensation amount is less affected by legal factors. This is not a surprise, given that the appraisal of moral harm and the determination of the *pretium doloris* is not subjected, under Spanish Law, to a legal scheme. Hence, judges have a wide margin of discretion. However, variations in compensation amount were aligned with variations in the length of imprisonment, but in a more attenuated way, with the variance being explained less in those cases (32% for imprisonment length vs. 15.4% for economic compensation).

Among extra-legal factors, it is worth mentioning that the courts take into account the impact that the crime has had on the victim not only when they decide the compensation amount, but also when they determine the prison length. We found that when a

psychological impact was acknowledged, the punishment became significantly higher. This suggests the existence of some victimological sentencing, that is, the judges showing more compassion for those women who have experienced more psychological suffering.

Conclusions, Recommendations, and Future Challenges

By way of conclusion, the results of this study lead us to formulate some recommendations to practice. Further research is needed to allow international comparison of the results, and to know how judicial decision-making evolves according to social changes. A deep understanding of the causes of perceiving intimate partner sexual violence as something less serious than other cases of sexual violence would require exploring the judicial reasoning employing qualitative studies. This is relevant, as one of the main limitations to the present study has been the impossibility to quantitatively assess if all the circumstances described in the “proven facts” differ in any way for the cases in which the victim had a previous intimate relationship with the offender, in comparison to the rest of the cases. Also, and as a future line of research, quantitative research with larger samples is needed to better understand how the magistrates’ gender could be a factor influencing sentencing, particularly in cases of rape and other sexual crimes.

Some recommendations for criminal policy and practice also arise from the present study. The previous findings allow us to be aware of the importance that legal factors have on the penalty in the judgments, as a guarantee to prevent disparity in sentencing, inequality, and prejudicial reasoning. As for practical implications, they underscore the need for a professional assessment of the victim impact in the criminal process, through victim impact statements or similar means, to prevent an inaccurate assessment of the effects of crime. Finally, given the reduced compensation amount awarded on average, we strongly emphasize the need to develop legal schemes in order to grant fair compensation for victims of sexual crimes, comparable to the higher amounts awarded in other European countries. The victim-offender relationship should not be considered a circumstance to factor in when assessing the crime impact.

Funding Open Access funding provided thanks to the CRUE-CSIC agreement with Springer Nature.

Data Availability The datasets generated during and/or analyzed during the current study are available from the corresponding author on reasonable request.

Declarations

Conflict of Interest The authors declare no competing interests.

Open Access This article is licensed under a Creative Commons Attribution 4.0 International License, which permits use, sharing, adaptation, distribution and reproduction in any medium or format, as long as you give appropriate credit to the original author(s) and the source, provide a link to the Creative Commons licence, and indicate if changes were made. The images or other third party material in this article are included in the article’s Creative Commons licence, unless indicated otherwise in a credit line to the material. If material is not included in the article’s Creative Commons licence and your intended use is not permitted by statutory regulation or exceeds the permitted use, you will need to obtain permission directly from the copyright holder. To view a copy of this licence, visit <http://creativecommons.org/licenses/by/4.0/>.

References

- Barker, L., Stewart, D. E., & Vigod, S. N. (2019). Intimate partner sexual violence: an often overlooked problem, *Journal of Women's Health*, 28(3), 363–374.
- Bielen, S., Dimitrova-Grajzl, V., & Grajzl, P. (2020). Sanctions for intimate partner sexual violence: Is the law on the books the law in action? *Journal of interpersonal violence*, 37(11-12), NP9635–NP9666. <https://doi.org/10.1177/0886260520985487>
- Breiding, M. J., Smith, S. G., Basile, K. C., Walters, M. L., Chen, J., & Merrick, M. T. (2014). Prevalence and characteristics of sexual violence, stalking, and intimate partner violence victimization--national intimate partner and sexual violence survey, United States, 2011. *MMWR Surveillance Summaries*, 63(8), 1–18.
- Cohen, J. (1988). *Statistical power analysis for the behavioral sciences* (2nd ed.). Hillside, NJ: Lawrence Erlbaum Associates.
- Cuenca, M. L., & y Graña, J.L. (2020). El estudio empírico sobre la violencia de pareja en España. In *En Tamarit y Pereda (coord.), Violencia y género en relaciones de pareja*. Marcial Pons.
- Delegación del Gobierno contra la violencia de género. (2020). *Macroencuesta de violencia contra la mujer (2019)*": <https://violenciagenero.igualdad.gob.es/violenciaEnCifras/macroencuesta2015/Macroencuesta2019/home.htm>. Microdata.
- Bundestag, D. (2008). *Vergewaltigung in der Ehe Strafrechtliche Beurteilung im europäischen Vergleich* (pp. 7–307/07). Wissenschaftliche Dienste.
- Du Mont, J., Parnis, D., & Forte, T. (2006). Judicial Sentencing in Canadian intimate partner sexual assault cases. *Medicine and Law*, 25, 139–157.
- Easteal, P., & y Gani, M. (2005). Sexual assault by male partners: A study of sentencing factors. *S. Cross UL Rev.*, 9, 39.
- Fernández-González, L., O'Leary, K. D., & Muñoz-Rivas, M. J. (2014). Age-related changes in dating aggression in Spanish high school students. *Journal of Interpersonal Violence*, 29(6), 1132–1152.
- Freeman, M. D. (1981). "But If You Can't Rape Your Wife, Who [m] Can You Rape?": *The Marital Rape Exemption Re-examined* (pp. 1–29). *Family Law Quarterly*.
- Graña, J. L., Andreu, J. M., de la Peña, M. E., & y Rodríguez, M.J. (2013). Validez factorial y fiabilidad de la Escala de tácticas para el conflicto revisada (Revised Conflict Tactics Scales, CTS2) en población adulta española. *Psicología conductual / behavioral psychology: Revista internacional de psicología clínica y de la salud*, 21(3), 525–544.
- Hester, M., & Lilley, S. J. (2017). Rape investigation and attrition in acquaintance, domestic violence and historical rape cases. *Journal of Investigative Psychology and Offender Profiling*, 14, 175–188.
- Kennedy, J., Easteal, P. L., & Taylor, S. C. (2009). Rape mythology and the criminal justice system: A pilot study of sexual assault sentencing in Victoria. *ACSSA Aware*, 23, 13–22.
- Kricken, T. R. (2019). Rape is not a contract: Recognizing the fundamental difficulties in applying economic theories of jurisprudence to criminal sexual Assault. *Wyo. L. Rev.*, 19, 477.
- Lonsway, K. A., & Archambault, J. (2012). The justice gap for sexual assault cases: future directions for research and reform. *Violence against women*, 18(2), 145–168.
- McCormick, J. S., Maric, A., Seto, M. C., & Barbaree, H. E. (2016). Relationship to victim predicts sentence length in sexual assault cases. *Journal of Interpersonal Violence*, 13(3), 413–420.
- Ministerio del Interior. (2019). *Informe sobre delitos contra la libertad e indemnidad sexual en España 2019*. Ministerio del Interior http://www.interior.gob.es/documents/642317/12812393/Informe_delitos_libertad_indemnidad_sexual_Espa%C3%B1a_2019_126210034.pdf/af914177-ccc7-4d6f-800b-e00637e87548
- Peterson, C., Liu, Y., Merrick, M., Basile, K. C., & Simon, T. R. (2021). Lifetime number of perpetrators and victim-offender relationship status per US victim of intimate partner, sexual violence, or stalking. *Journal of interpersonal violence*, 36(13-14), NP7284–NP7297.
- Richardson, S. (2020). Marriage: A get out of jail free card? *International Journal of Law, Policy and the Family*, 34(2), 168–190.
- Rumney, P. N. (1999). When rape isn't rape: court of appeal sentencing practice in cases of marital and relationship rape. *Oxford Journal of Legal Studies*, 19(2), 243–270.
- Rumney, P. N. (2003). Progress at a price: The construction of non-stranger rape in the Millberry sentencing guidelines. *Mod. L. Rev.*, 66, 870.
- Rumney, P., McPhee, D., & Fenton, R. (2016). *A comparative analysis of operation bluestone: a specialist rape investigation unit*. Summary Report. SSRN Electronic Journal. <https://doi.org/10.2139/ssrn.2911123>
- Sitton, J. (1993). Old wine in new bottles: The marital rape allowance. *NCL Rev.*, 72, 261.

- Tamarit Sumalla, J. M., Aizpitarte Gorrotxategi, A., Arantegui Arràez, L., & Romero Seseña, P. (2022). Respuesta judicial a la agresión y al abuso sexual: Relevancia de los factores legales y extralegales en las sentencias. *Revista de Derecho Penal y Criminología*, 27, 197–238.
- Tracy, C. E., Fromson, T. L., Long, J. G., & Whitman, C. (2012). *Rape and sexual assault in the legal system* (pp. 4–5). National Research Council of the National Academies Panel on Measuring Rape and Sexual Assault in the Bureau of Justice Statistics Household Surveys Committee on National Statistics.
- Walker, S. J., Hester, M., McPhee, D., Patsios, D., Williams, A., Bates, L., & Rumney, P. (2021). Rape, inequality and the criminal justice response in England: The importance of age and gender. *Criminology & criminal justice*, 21(3), 297–315.
- Warner, K. (2000). Sentencing in cases of marital rape: Towards changing the male imagination. *Legal Studies*, 20(4), 592–611.
- Waterhouse, G., Reynolds, A., & Egan, V. (2016). Myths and legends: The reality of rape offences reported to a UK police force. *The European Journal of Psychology applied to Legal Context*, 8(19), 1–10.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.