

# Dani Alves Verdict: Lights and Shadows of the Spanish Justice System

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## *Facts of the Case:*

On the night of December 30th to 31st, 2022, events occurred that led to the conviction of footballer Dani Alves for a sexual assault offense. The timeline and events of that night are essential to understanding the legal basis of the sentence.

Initially, Alves was in the Canary Islands with his wife but traveled to Barcelona on the same day. In Barcelona, he met with a friend and later they headed to the Sutton nightclub, where they settled in a usual reserved area. The victim, a 23-year-old woman, arrived at the nightclub later that night with her cousin and a friend. After an initial invitation that was rejected and later accepted, they joined Alves and his friend's reserved area. According to reports, in this environment, Alves behaved inappropriately towards the young woman, which culminated in taking her to an isolated area within the premises.

According to the victim's account, once isolated, Alves committed acts constituting sexual assault, including non-consensual contact and physical violence. The victim reported being forced into sexual acts without her consent and experiencing physical assaults during the incident.

After the incident, the victim left the nightclub and reported the events to the venue's security authorities, triggering police intervention and subsequent specialized medical attention for victims of sexual assault at the Hospital Clínic de Barcelona.

This case raises several important legal issues. Alves's conviction is based on evidence collected during the investigation, including testimonies and forensic evidence. His defense argued that the acts were consensual, a claim that was rejected by the court based on the evidence presented.

This incident highlights the importance of evidence in cases of sexual assault, the legal interpretation of consent, and the responsibility of public figures in their behavior. The swift action of the nightclub and the police illustrates protocols for responding to allegations of sexual assault, while the medical attention provided to the victim underscores the importance of support for individuals in abusive situations.

Alves's conviction has legal and social implications, contributing to the debate on safety in nightlife spaces and acceptable behavior, especially by high-profile individuals. This case serves as a study of

the dynamics between the law, victims' rights, and personal responsibility in incidents of sexual assault.

*Procedural Issues:*

**Parallel Trial and Presumption of Innocence:** It is emphasized that, although criminal proceedings against public figures can generate great media interest, this should not affect the judicial process itself. The court acknowledges the media influence but argues that it has not had a direct impact on the process, maintaining the presumption of innocence until proven otherwise.

**Impartiality of the Judge:** The defense argued that the investigating judge lost impartiality during the investigation. However, the court concludes that there was no such loss of impartiality, highlighting that the impartiality of the judge is fundamental for a fair process and that no bias affecting Alves's defense was demonstrated.

**Relationship between the Accusation Writings and the Expedited Procedure Order:** The court analyzes whether the accusation writings exceeded the facts established in the expedited procedure order. It concludes that there were no excesses and that the writings remained within the framework established by the investigating judge. This is crucial as it ensures that the accusation does not present surprise charges that have not been previously investigated.

**Protection Measures for the Plaintiff:** The court adopted several measures to protect the plaintiff, including holding the hearing behind closed doors and distorting her voice and image. These measures seek to balance the principle of trial publicity with the protection of privacy and the rights of the victim, avoiding secondary victimization.

*Assessment of the Evidence Presented:*

The assessment of evidence in Dani Alves's case focuses primarily on the victim's statement, given the nature of sexual freedom offenses, where consent plays a crucial role. The court clarifies that the mere filing of a complaint does not automatically confirm the truthfulness of the reported facts. Although there is no presumption of truthfulness for the victim, the accusations must prove the commission of the offense, without the victim's statement automatically prevailing over that of the accused.

The court relies on the free assessment and appreciation of evidence, allowing for a full conviction based on any probative means presented, as long as procedural principles are respected, and the assessment is adequately explained. In this case, the victim's statement during the trial, along with other evidence corroborating her account, was positively assessed, finding coherence and persistence in her testimony throughout the investigation and trial, with no relevant contradictions undermining her credibility.

The subjective and objective credibility of the victim's testimony was analyzed, without finding spurious motives that could have influenced her statement. It was concluded that the complaint would bring her more trouble than benefits, thus ruling out any intention to harm the

accused for spurious reasons. Additionally, it was noted that the victim had no direct economic interest in the case, as she rejected a monetary offer from the defense before the trial.

The detailed analysis of the situation prior to the alleged offense, the events occurring during the incident, and what happened afterward support the evidence assessment. Witness testimonies and observed behavior on security cameras provide a context that supports the victim's narrative. The evaluation of the behavior and statements of both the victim and witnesses by the court led to the conclusion that the version of events presented by the plaintiff was credible and supported by additional evidence.

Finally, the sentence reflects careful consideration of all presented evidence, emphasizing the importance of a fair trial and an objective assessment of statements and evidence. The need for rigorous analysis in cases where personal statements are fundamental to the final decision is highlighted. In this context, the court concluded that the evidence was sufficient to support Alves's conviction for sexual assault, based on the coherence, credibility of the victim's testimony, and support from other evidence presented during the trial.

#### *Guilty Verdict and Sentence:*

The court sentenced the athlete to four years and six months in prison, basing its decision on a set of evidence that, according to the ruling, demonstrates the commission of the crime under circumstances aggravated by the lack of consent and the use of violence.

The sentence highlights several key points in its rationale. First, it emphasizes the importance of consent in sexual relationships, stressing that it must be explicit, continuous, and specific for each sexual act. The court clarifies that the absence of consent is clearly seen in the defendant's behavior, who, according to the proven facts, used violence to subdue the victim's will, contradicting any assumption of implicit consent.

Furthermore, the court significantly values the victim's testimony, which has been considered coherent, persistent, and credible throughout the entire judicial process, from the investigative phase to the oral trial. This testimony, reinforced by peripheral evidence such as the physical injuries suffered by the victim and her post-incident behavior, provides a solid basis for the verdict.

The court also notes that for the existence of sexual assault, additional physical injuries or heroic opposition from the victim are not necessary. This clarification is crucial, as it dismantles any argument attempting to minimize the gravity of the offense based on lack of physical resistance or serious injuries. The fact that the victim presented knee injuries is indicative, according to the court, of the violence employed by the defendant to carry out the assault.

Another relevant aspect is the court's consideration of damage repair. Although Alves deposited compensation from the initial phase, which is recognized as a mitigating factor, this does not exempt the defendant from the criminal consequences of his actions. The deposited amount, 150,000 euros,

intended to compensate for the moral damage and injuries to the victim, reflects the seriousness of the crime and the need for significant reparation.

Finally, the additional measures imposed by the court, such as supervised release after the prison sentence, the prohibition of approaching or communicating with the victim, and special disqualification, indicate the seriousness with which the case has been treated and the intention to protect the victim and society from possible future offenses.

*Critique of the Sentence:*

The sentence in Dani Alves's case presents notable inconsistencies, especially regarding the application of the mitigating factor for damage repair. Alves's defense argued that the early delivery of 150,000 euros to the victim demonstrated his willingness to make amends, a sum that the court accepted as a mitigating factor, reducing the severity of the penalty. However, this judicial decision is questionable since the amount was deposited after the judicial imposition as bail, raising doubts about the spontaneity of Alves's reparative will.

Furthermore, the magnitude of the sum delivered was considered a significant effort by the defendant, ignoring the fact that, compared to his wealth, such an amount represents a minimal fraction, suggesting unequal treatment under the law based on economic capacity. This introduces a class bias in the application of justice, disproportionately benefiting wealthier individuals.

Another area of discrepancy lies in the lack of coherence between the severity of the proven acts and the imposed penalty. Despite recognizing the trauma and injuries suffered by the victim, the court opted for the minimum possible penalty within the established range, which appears to minimize the severity of sexual violence and its long-term consequences for the victim. Additionally, the sentence does not adequately reflect the psychological and emotional impact on the victim, nor the gravity of the violence exercised.

Finally, the sentence shows an apparent contradiction between the assessment of the victim's credibility, which has been considered high, and the decision to apply the minimum penalty, which may convey a concerning message about the seriousness with which sexual offenses are treated in the judicial system. The apparent inconsistency between recognizing the harm suffered by the victim and applying the mitigating factor for damage repair, without a profound reflection on the genuine will to repair the damage caused, raises serious questions about the justice and equity of the verdict.

*A Systemic Failure:*

The case of Dani Alves has highlighted deep deficiencies in the judicial system that affect not only the victim in this case but also the perception and treatment of victims of sexual violence in general, particularly women.

The sentence imposed on Alves, four and a half years, represents the minimum within the penal spectrum for sexual assault offenses in Spain. This has led to questioning the message that the

judicial system sends to victims who dare to report these crimes. The victim, who suffered a traumatic rape, faced the system hoping for justice; however, the outcome of the trial may be perceived as a devaluation of her experience and suffering. Despite the credibility granted to her testimony and the evidence corroborating the assault, the minimum sentence suggests a lack of full recognition of the severity of the facts and the lasting consequences these events have on victims.

This perception of helplessness and lack of protection is amplified when considering the influence that high-profile cases like this have on society. Fear of not being taken seriously, of revictimization during the judicial process, and of reprisals can discourage other women from reporting sexual assaults. If the perceived outcome of such a public process is a sanction that seems not to correspond to the seriousness of the offense, then the system is failing not only one woman but all.

The application of the mitigating factor for damage repair by the court, based on the economic amount delivered by Alves before the sentence, introduces a concerning precedent. It suggests that the economic capacity of a defendant can influence the perception of their willingness to make amends, without adequately considering the authenticity of that intention or the real impact of the compensation on the victim's recovery. This approach can be interpreted as a system that favors the wealthiest, distorting the concept of equitable justice and undermining trust in judicial impartiality.

Furthermore, the sentence reflects a gap between the evolution of society and laws regarding consent and sexual assault. Although the legal reform known as "only yes means yes" seeks to recalibrate this balance, judicial practice, as seen in this case, may not be fully aligned with the principles of the reform. This reveals a disconnect between legislative intent to protect and empower victims of sexual assault and the actual application of these laws in courts.

The sentence also highlights the need for deeper judicial training on gender and sexual violence issues. The lack of a sentence reflecting the seriousness of the facts and the victim's trauma suggests that there is still work to be done to ensure that judges fully understand power dynamics, coercion, and the psychological impact of sexual violence.

Ultimately, the system's failure in this case is not just a failure towards one woman but towards all women who have suffered or may suffer sexual violence. It sends a discouraging message about the value the judicial system assigns to their safety and dignity. To correct this failure, it is essential for there to be a joint effort to review and reform judicial practices, ensuring that sentences reflect the seriousness of sexual assault offenses and that the rights of victims are protected and respected throughout the judicial process.

The case of Dani Alves, therefore, must serve as a call to action to improve the judicial system and reaffirm society's commitment to justice and equality for women, ensuring that the courage to come forward and report is not in vain and that it translates into real and effective justice.

*Relationship with International Law:*

The connection of Dani Alves's case with the international legal framework and decisions of UN bodies can be further illustrated by considering the general observations and specific recommendations made by the CEDAW Committee and other relevant UN mechanisms in similar cases. For example, the CEDAW Committee has issued several general observations related to violence against women and the rights of victims, such as General Observation No. 35 on gender-based violence against women, updating General Recommendation No. 19. In it, the Committee defines violence against women as a form of discrimination that seriously impedes women's ability to enjoy rights and freedoms on an equal footing with men.

Furthermore, the Committee has periodically reviewed reports from State parties on the measures taken to fulfill their obligations under CEDAW. In these reviews, specific recommendations have been made to countries to improve their legislation and judicial practices regarding sexual violence. Although each recommendation is specific to a country, the underlying principles are universally applicable and emphasize the need for adequate legislation, fair and gender-sensitive judicial procedures, and protective measures for victims.

A relevant case examined by a UN body is the 2018 decision of the Human Rights Committee (*Ángela González Carreño v. Spain*), which addressed the lack of effective protection for a woman and her daughter against domestic violence. Although the context is different, the case underscores the State's responsibility to act with due diligence to prevent and respond to violence against women, a standard that extends to cases of sexual assault.

On the international stage, we can also refer to the jurisprudence of the European Court of Human Rights (ECtHR), which, although not a UN body, has significantly influenced the interpretation of human rights in Europe. Cases like *M.C. v. Bulgaria* have established that lack of consent should be the central criterion for determining the existence of rape and that States have a positive obligation to effectively investigate cases of sexual violence.

These examples demonstrate how the principles and recommendations of international organizations and relevant jurisprudence could be applied to the analysis of national cases like that of Dani Alves. They reflect the need for judicial systems to respect and apply international standards that ensure the protection of women's rights and the provision of effective resources in cases of sexual violence.

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