
'Rape' report won't transform Strauss-Kahn case

Fri, Aug 19 2011

By Joseph Ax

NEW YORK (Reuters) - When a French magazine reported on the leaked medical records of Dominique Strauss-Kahn's accuser earlier this week, lawyers on both sides of the case scrambled to provide competing interpretations.

But legal analysts say that, despite its incendiary language, the report is unlikely to be a game-changer in either a criminal or civil trial.

The medical report, as described by L'Express, contains two areas of evidence that could bolster Nafissatou Diallo's account of the incident: observations about her physical condition, and the story she told doctors about the alleged assault.

According to the magazine, the report gives "rape" as the cause of her injuries. But that statement likely reflects only her account to doctors.

"That's not a medical conclusion," said Matthew Galluzzo, a former sex crimes prosecutor in Manhattan. "If I fell off my bicycle and hit my head on the sidewalk, and I tell the doctor that it was the result of someone hitting me with a wrench, they're going to put down, 'Cause: assault.' They're not investigators in that sense."

INJURIES INCONCLUSIVE

The report also documents redness in Diallo's vaginal area and indicates that she complained of shoulder pain, according to the magazine. But the injuries do not in and of themselves prove that an assault occurred, experts said, a common aspect of sexual assault cases.

"It's rare to have medical or physical evidence that really corroborates an assault," said John Clune, a Colorado-based victims' lawyer. "More often than not, the medical issue is kind of a wash."

Still, the doctor would probably have declined to enter assault on the form if the condition he observed were not at least consistent with that possibility, Galluzzo said.

"Her injuries are consistent with the incident she's described. But it doesn't prove that what she says happened actually happened," he said.

Diallo's lawyer, Kenneth Thompson, said Tuesday that the report was "pretty powerful" and showed that an attack had occurred.

Strauss-Kahn's lawyers, Benjamin Brafman and William Taylor, said in a statement that the report did not document any injuries "at all," but showed "common conditions consistent with many possible causes other than a sexual assault."

HEARSAY RULE

In theory, the report could also help show that Diallo's story of assault has remained consistent from the beginning.

But Daniel Bibb, a former Manhattan prosecutor, said the account she gave to doctors would probably be barred from evidence under the hearsay rule, which prohibits most statements made out of court.

"It is more likely than not that her claims about how the injuries were sustained would be redacted," he said. "I don't see how that can be admitted."

One exception to the hearsay rule allows statements made immediately following an alleged sex crime. Individuals who hear those statements are known as "outcry" witnesses.

In this case, there may be several outcry witnesses -- the hotel employees to whom Diallo spoke after the encounter and, perhaps, the police officers who first came to the scene.

But it is likely that Diallo's words to hospital personnel came too long after the incident to be considered an "immediate outcry," legal analysts said.

A doctor might be permitted to testify that she claimed to be attacked, but only as an explanation for why he took certain steps, such as ordering a sexual-assault examination, Bibb said. Her statements to a doctor would not be considered evidence of what actually occurred.

In the end, the medical facts -- even if inconclusive -- have some impact in court, said Jeremy Saland, a former



Manhattan prosecutor. The story she told to doctors, by contrast, is only useful in the "court of public opinion."

In a civil trial, where the burden of proof is far lower than in a criminal case, the report could help tip the balance in Diallo's favor, experts said.

"You start adding up the evidence," said Jeff Herman, an experienced sexual abuse victims' attorney. "It becomes a cumulative thing."

Strauss-Kahn -- the former head of the IMF and once considered a leading contender for the French presidency -- is due back in court Tuesday, when prosecutors are expected to tell a judge whether they plan to proceed. The case has wobbled ever since the Manhattan district attorney's office revealed Diallo had lied about her past, throwing her credibility into doubt.

Diallo filed a civil lawsuit against Strauss-Kahn last week in the Bronx, seeking unspecified damages.

The civil case is Diallo v. Strauss-Kahn, New York State Supreme Court (Bronx County), No. 307065-2011.

The criminal case is People of the State of New York v. Dominique Strauss-Kahn, New York State Supreme Court, No. 2526-2011.

(Reporting by Joseph Ax; Editing by Eddie Evans)
