



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

NY Defamation Ruling Seen As Win For Sex Assault Survivors

By **Y. Peter Kang**

Law360 (March 12, 2021, 9:20 PM EST) -- The alleged assailant was a Brooklyn prosecutor, the sexual assault victim a New York Daily News reporter. A month before trial, the prosecutor sued her for defamation. The criminal case ended with a hung jury. But sexual assault survivors saw a victory unfold recently after an appeals court tossed the defamation lawsuit and issued a warning that such claims could silence victims, attorneys said.

A Manhattan trial judge overseeing the defamation case erred by refusing to dismiss the suit accusing the female reporter of falsely reporting to police that the former Brooklyn assistant district attorney, Chrismy Sagaille, twice put his tongue in her mouth while she was giving him a ride home and grabbed her breast over her clothing without consent, an Appellate Division panel **ruled March 9**.

Sagaille, who is no longer with the Brooklyn District Attorney's Office, was criminally charged with two counts of sexual abuse and one count of forcible touching in 2017, but the June 2018 criminal trial ended in a hung jury, a mistrial was declared and the charges were eventually dropped, according to court papers.

In the defamation case, the reporter had argued that the suit should be tossed because her statements to police were privileged and thus she was shielded from defamation claims under the doctrine of qualified immunity. But the trial judge said Sagaille plausibly alleged that the reporter acted with malice in reporting the allegedly false claims, which would overcome the qualified privilege protecting her statements to police.

However, the First Judicial Department panel said that the statements could not be construed as "actual malice" as they were a "straightforward rendition of the incident" the reporter said took place during the car ride.

"It is difficult to see how defendant could have been more succinct or restrained in her description of the events while accomplishing her purpose: to report to the police that she had been the victim of sexual assault," Justice Sallie Manzanet-Daniels wrote in a signed and published opinion.

Attorneys told Law360 that the decision is important because one of the main reasons sexual assaults go unreported is victims' fear of retaliation. The U.S. Department of Justice estimates that only 25% of total incidents are reported to police.

Justice Manzanet-Daniels said that defamation suits against accusers may constitute a form of retaliation as such cases could lead to years of litigation and invasive discovery and force victims to relive traumas during depositions and court testimony.

"The lower court's holding has the effect of dissuading a victim from seeking an order of protection since the sexual assault victim must file a police report in order to obtain an order of protection," the justice wrote in the opinion. "It has the effect of emboldening sexual assaulters who seek to weaponize the legal system in order to silence their victims."

Joseph Sanderson of Kirkland & Ellis LLP, who helped draft a friend-of-the-court brief in the case on behalf of the National Women's Law Center and more than 30 other advocacy groups, said retaliatory defamation suits are a "big problem" in New York.

"[The ruling is] very important in terms of deterring people from using defamation lawsuits as a way to retaliate, and we think the decision will definitely help a lot of people and we're pleased to have contributed to that," he said. "We've seen incidents where people who report discrimination, for example, have faced retaliatory defamation suits. I can definitely say from experience that this is a recurring problem."


Sanderson said the appellate court's ruling makes clear that defamation suits need to show more merit in order to overcome the qualified privilege protecting statements made by alleged victims.

"There's a history of cases in New York that can be used to imply that it's very easy to plead around qualified privilege," he said, referring to the low bar set for defamation plaintiffs to overcome similar motions to dismiss. "To some extent, this area of New York law has been unclear, so it was important the Appellate Division clarified this."

While the recent opinion doesn't bar such defamation claims or create an absolute privilege for accusers' statements to police, "it does make it a bit harder to file a case without merit and use the process to punish someone speaking out against you," Sanderson said. The opinion was just the latest in a line of rulings in recent years that could be considered favorable for sexual assault victims, he said.

"I can't speak for the justices, obviously, but I think there is certainly a greater awareness of these issues broadly in society, and judges are probably not exempt from that," he said. "The Appellate Division has issued a number of rulings that have been positive for people who have experienced sexual assault or sexual harassment."

Anthony DiPietro, a personal injury plaintiffs attorney based in Manhattan, highlighted another recent ruling by the First Department that underscored the court's willingness to wade into sexual assault issues.

In that case, [Engelman v. Rofo](#) , 11 women are accusing a voice acting coach of sexually assaulting them during lessons. The court found on March 4 that a state law setting a one-year statute of limitations for civil assault claims can't preempt the seven-year time limit under New York City's Victims of Gender-Motivated Violence Protection Law.

"I believe we're at the beginning of a long-overdue cultural shift in how we, as a society, view these cases," DiPietro said.

The attorney, who is representing more than a dozen women **suimg Columbia University** over a former obstetrician-gynecologist's alleged sexual abuse during medical examinations, said New York courts are starting to take a "more reasoned view" as to how defamation cases can affect underlying claims of sexual assault.

"We're seeing the courts starting to exhibit more of an awareness of how these cases work," DiPietro said. "To say that someone who is reporting abuse that was committed upon her or him is maliciously reporting it, it just seems inherently unfair. While malicious reporting can happen, it is the exception and not the rule."

Sagaille is represented by Nanette Ida Metcalf of Metcalf & Metcalf PC.

The reporter is represented by Christian D. Carbone and Sarah Levitan Perry of Loeb & Loeb LLP, and Erin Smith Dennis.

The case is *Sagaille v. Carrega et al.*, case number 2020-02369 154010/18, in the Supreme Court of the State of New York, Appellate Division, First Judicial Department.

--Editing by Jill Coffey and Breda Lund.