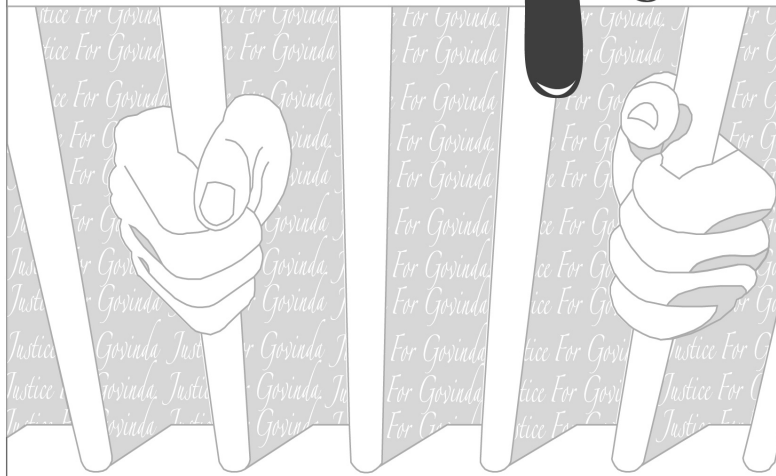
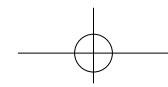


# Justice For Govinda

An Innocent Nepalese Man In a Japanese Jail



Published by Justice for Govinda-Innocence Advocacy Group, Japan



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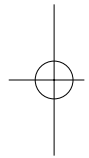
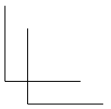
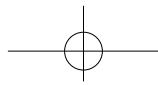
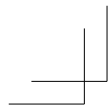
# JUSTICE FOR GOVINDA!

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Published by

Justice for Govinda-Innocence Advocacy Group, Japan





# JUSTICE FOR GOVINDA!

An Innocent Nepalese Man In a Japanese Jail

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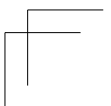
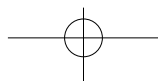
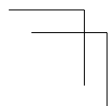
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Illustration by Yuriko Sugiyama





## Preface

The Justice for Govinda-Innocence Advocacy Group Japan has been supporting Govinda Prasad Mainali, a Nepalese national who was falsely convicted of the murder of a Japanese woman. This booklet, originally published in Japanese, exposes the truth concerning the case. It describes how inaccurate investigation, prosecutor misconduct and an incompetent Japanese justice system railroaded Govinda into prison.

Despite the fact that the Tokyo District Court found Govinda NOT guilty, he remained incarcerated. The Tokyo High Court later overturned the District Court's ruling and sentenced him to life imprisonment. He appealed to the Supreme Court and is now awaiting its final decision while sitting in a jail cell, far from his family in Nepal. He has maintained his innocence from the very beginning.

We hope that this English version of the booklet will help more people understand Govinda's false conviction, and that the Supreme Court judges in Japan will hear the voices from around the world calling for Govinda's release.

Justice for Govinda-Innocence Advocacy Group Japan



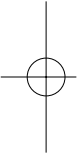
## A Greeting from Govinda

*This greeting was written by Govinda for a rally held by Justice for Govinda-Innocence Advocacy Group.*

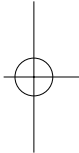
Namaste, and God bless you. First, I would like to convey my deepest gratitude for your support, and I would like to ask your further support to rescue me from this agony. I am innocent; I am not guilty of anything I am accused of.

I was born in eastern Nepal in 1966. My father's name is Jyaya Prasad Mainali, and my mother's name is Chandrakara Mainali. I am their third child; I have a brother and a sister, both elder.

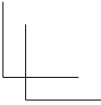
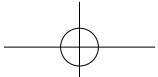
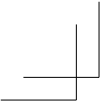
I married my wife, Radha, when I was 25. We have two daughters. I named the elder daughter Mithila, and the younger one Lisa. They are now eight and nine.



When I was 10, I learned about Japan in a history class at school. I felt sad when I learned that a great number of people were killed in Hiroshima and Nagasaki when the US dropped the atomic bombs. However, I also learned that, because of extraordinary efforts made by Japanese people after the war, Japan has developed into one of the world's most affluent countries. I have come to recognize Japan as the "Land of the Rising Sun". I wanted to learn more about Japanese people and their culture. I dreamed that one day I would go to Japan and witness its prosperous society.



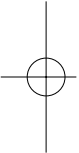
Later, my brother and sister befriended a Japanese person, so they started visiting Japan often. They encouraged me also to visit Japan, saying that there were many jobs, and people were very friendly. I thought that if I worked hard for several years in Japan, I could save lots of money. Eventually, I decided to come to Japan to earn enough money to build a new, modern house in Nepal, give my daughters a good



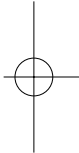
education and lead a happy life with my family. So, I left my lovely daughters, aged parents and dearest wife in Nepal and came to Japan in April 1994.

On the way from the airport in Tokyo, I felt like I was in heaven. Skyscrapers, well-organized highways and bridges fascinated me. I felt really happy when I found people in Japan gentle and honest.

I started working as a waiter. Every day, I worked hard for the sake of my family. I sent all the money I earned to Nepal, leaving behind only enough to support myself. I sent my daughters to a prestigious school. I bought a piece of land in Katmandu, where I planned to build a house.



Everything was going as I had planned until the police arrested me, out of the blue. At the police station, investigators threatened me and tried to force me into making a false confession. They kicked me and beat me. They turned deaf ears to my claim that I was telling the truth and that I did not murder anybody.



Fortunately, the Tokyo District Court heard my cry for innocence and found me not guilty. Despite the acquittal, to my surprise, the Tokyo High Court decided to keep me detained. My hope to go back home was shattered. Eventually, the High Court reversed the lower court's decision and sentenced me to life imprisonment.

Judges are supposed to be wise enough to find the truth, are they not? They are not supposed to be biased, or incompetent enough to convict an innocent person like me. It has already been four years since I was thrown into a tiny cell. How long must I bear the hardship caused by a crime I never committed?

I would like to thank you again for your kindness and devoted support, which encourage me more than anything else does. I ask you again to help me so that the Supreme Court will make a fair judgment, and I will be able to go back to Nepal and be with my family.



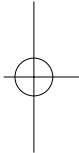
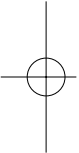
## A Message from Govinda's Attorney

Katsuhiko Tsukuda, Attorney

I met Govinda for the first time in April 1997, when fellow attorney Asaka Kanda invited me to meet him. We both decided to represent Govinda. I met Govinda at the Metropolitan Police Department, where he was being detained for violating the immigration law.

My first impression of Govinda was that he was sincere and kind-hearted. That impression has not changed.

After his acquittal, I visited Govinda in the immigration detention center for deportation. He was happy and relieved that he was finally proven innocent. "See, God was there for me," he said, smiling.



Although I don't believe in any particular religion, I remember replying, "Yes, he was. I'm happy for you." I, too, believed that when he cried, "God, I didn't do it!" from the bottom of his heart, it reached both God and the Tokyo District Court.

Then, the Tokyo High Court cruelly sentenced Govinda to life imprisonment for what I believe are irrational reasons. When he heard the decision by the High Court, Govinda screamed "Oh my God!" But it is the High Court, not God, who is responsible for this terrible decision.

Now the case is before the Supreme Court. Govinda, who awaits their decision in detention, is praying to his God that he will be proven innocent.

I am very happy that the Justice for Govinda-Innocence Advocacy Group has published this booklet filled with such valuable information. In this booklet, the Justice for Govinda members analyze the court decisions in detail so that you can learn more about Govinda's case.

I hope that the readers of this booklet think about Govinda, who is fighting his conviction, and join Justice for Govinda to give him further support.



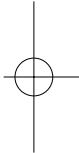
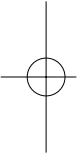


## Foreword

### Two Victims

Mikiko Kyakuno

I am a Catholic housewife who, for humanitarian reasons, visits foreigners being held in the Tokyo Detention Center. In July 2000, I first interviewed Govinda Prasad Mainali, a Nepalese defendant charged with the homicide of a woman who worked for the Tokyo Electric Power Company.



Most people in Japan are familiar with this case. The incident occurred in March 1997 and was covered by TV and other media. A book based on the incident, *The Murder of an Employee of Tokyo Electric Power Company*, written by Shinichi Sano, became a record-breaking bestseller. I, too, was closely following the development of this case. Govinda was arrested for overstaying his visa in Japan, but he was investigated on suspicion of murder-robbery. Although Govinda insisted his innocence from the beginning to the end, there was no decisive evidence to prove his innocence, and he was being prosecuted only on circumstantial evidence.

As the trial progressed, it became clear that much of the evidence was circumstantial and did not prove his guilt. Considering this point, the Tokyo District Court adopted "the benefit of doubt" clause and in April 2000 declared Govinda innocent.

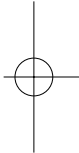
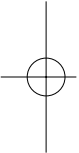
If Govinda were Japanese, he would have been released immediately, but since he was also charged for illegal over-stay in Japan, he was ordered for deportation and transferred to the Tokyo immigration ward. However, after the prosecutor's repeated requests, the Tokyo High Court made an exceptional decision to detain Govinda even after his



acquittal. He was sent back to the Tokyo Detention Center just before he was to be sent home.

I then learned that Katsuhiko Tsukuda, one of the defense counsels for Govinda, had pleaded for him at the Convention of Alien Laborers Union. "Govinda is so discouraged," he said. "If only someone would visit and encourage him." I immediately applied for an interview with Govinda, together with Mai Kaneko, an undergraduate majoring in sociology.

"Namaste." Govinda greeted us, putting his hands together before his chest in a polite Nepalese manner, welcoming us with a warm smile as though we were longtime friends. However, as soon as the prison officer told him to sit before the window, his expression suddenly became very serious. "Please help me," he entreated. "I have not done anything wrong!"

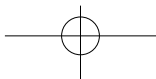


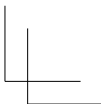
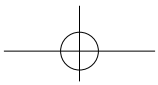
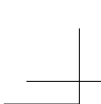
I knew that there was a great possibility that Govinda had been falsely charged. After I met him, I realized that his only desire was to have us believe in him. However, at this stage, I still wanted to maintain a neutral stand.

Soon, the hearing of the Intermediate Appeal Court began. It moved with exceptional speed. We read the newspaper reports of the hearing and discussed them with Govinda at each interview, but no new evidence was presented at the court. I was optimistic, thinking that a reverse decision of the first trial was impossible.

On December 22, 2000, the day of the High Court pronouncement of decision, I was lucky enough to obtain a ticket to sit in the court. I heard the voice of the Chief Judge, Toshio Takagi, announce that the original judgment had been reversed. "The sentence is life imprisonment for the defendant." I could not believe my ears. Govinda's sad cry echoed in the court: "Oh God, I did not do it. Please help me!"

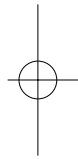
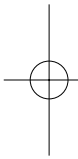
His cry for help truly moved me. At that moment, I came to believe





in Govinda's innocence. Later, after listening to an hour-long reason for the decision, I was filled with anger. Although the District Court's decision stated that there were some "reasonable doubts" and pointed out several facts that remained unexplained, the High Court judge stated that "even if it is impossible to explain the evidence, it does not mean that the defendant is innocent." He concluded by saying " putting all the evidence together, no other than Govinda could have committed the crime."

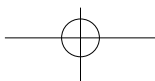
When I heard the judge's words, I was dumbfounded beyond the feeling of anger. By intentionally neglecting and ignoring evidence of innocence, how could the judge say, "putting all the evidence together"? Should we permit this kind of deception when deciding the fate of a human being?

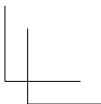
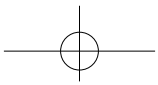
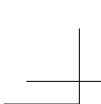


The High Court's decision left us unable to discern any serious attempt to discover the truth. Later, I learned through a TV news program that Chief Justice Takagi was one of the judges who had decided on Govinda's detention after the lower court exonerated him. Judge Takagi was known among lawyers as an extremely prosecution-oriented judge and had a history of many biased judgments. However, should a case be abandoned just because one is unlucky enough to have this kind of judge? Govinda believed he would be living with his family in Nepal on the eve of the 21st century; instead, he welcomed the New Year alone in a freezing detention cell, angry and desperate.

When I interviewed Govinda for the first time after his conviction, his eyes were red and swollen. "Mrs. Kyakuno, why?" he said. "I was telling the truth, but why did the judges not understand?" When the judge announced his sentence of imprisonment for life, Govinda's mind went blank.

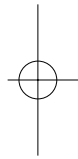
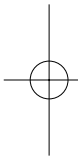
The High Court's decision probably reflects the popular opinion





that Japan must deal more severely with the increasing rate of crimes committed by foreign people. However, an increase in juvenile delinquencies does not mean that all juveniles are delinquents; likewise, an increase in crime by foreigners does not mean that all foreigners are criminals. If considered rationally, these facts could be easily understood by anyone.

It is true that the foreign people with whom I work have committed illegal acts. However, they did not come to Japan with the intention of committing crimes. They came to Japan to seek stable, well-paying work not available in their countries, to provide for their own future and happiness of their families. Unfortunately, things did not work out as anticipated. Faced with unexpected difficulties, they committed crimes, knowing that it was wrong. Govinda had a stable job with a good salary. He sent money to his family in Nepal every month, and he had a house built in Katmandu. His life was going very smoothly. He was fortunate among the foreign workers in Japan. That being the case, why would he steal 40,000 yen -- approximately US\$350 -- to cover the shortage of his rent and put his future at stake?



I was not the only one angry about the unfair decision of the High Court and convinced that Govinda had been wrongly convicted. Those concerned about Govinda's case began meeting regularly, and on January 25, 2001, we formally founded an organization to advocate Govinda's innocence. When Govinda heard that we had established a support organization, he replied emphatically, "You can all believe me; I swear I did not do it."

On July 5, the defense counsel submitted an application for final appeal to the Supreme Court. The Highest Court usually does not open the hearings. Instead, the judges examine the documents in camera. Therefore, it is impossible for us to know the progress of the trial, which can last about three years. With so many sensational incidents happening

these days, Govinda's case will fade from the spotlight unless we keep fighting for his acquittal. We have been looking for a concrete strategy to arouse public opinion.

Many people, like Govinda, have been accused falsely. When I attended meetings of similar support groups, I became depressed when I learned how remote reality is from the doctrine of the law and the dignity of man. In fact, to my regret, many people look coldly upon those who have been unfairly accused. "There is no reason for the police to arrest anyone unless he is a criminal." "With the modern progress in scientific investigation, there should be no false charges." "A layman should not dispute the decision of the judge, whether right or wrong." "We cannot free the convicts." "It cannot be helped if a false charge is given to one out of the hundred." Hearing these comments hurt me deeply. Is this "the public common sense" or "the wisdom of adults"?

I am sometimes asked, "Why do you believe that he did not do it?" My response is, "Why do you believe that he did do it, based only on the possibility theory of 'conceivable' and 'maybe'?"

"To punish the innocent is a greater crime than the act of the criminal," said Montaigne. It is a crime of power, letting loose the criminal while producing two victims. We cannot permit the injustice of sentencing an innocent person to life imprisonment.



## Chapter 1: Govinda's Arrest

The criminal case known in Japan as "The Murder of an Employee of Tokyo Electric Power Company" aroused much public attention.

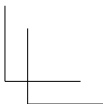
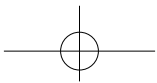
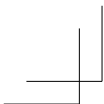
In March 1997, a woman in her thirties was found murdered at an apartment in Shibuya-ku, Tokyo. The murder might have been treated as a common homicide, but Ms. Yasuko Watanabe happened to be a graduate of a famous private university working as an economist for a top utility company, and her body was found near a pleasure quarter of the city. She had been moonlighting as a prostitute around the area for a couple of years, and this fact aroused great interest in the mass media. Almost every day, the media carried news about the nightlife of this "single", "beautiful" and "elite" woman. Some media reported her personal history from her kindergarten days, and some even published nude pictures of her.

At the time of the murder, Govinda was living in an apartment next to Shibuya-so 101, the apartment where the murdered woman's body was found. Govinda, who was looking for a suitable flat for his friends, had borrowed the apartment key from the superintendent before the incident so that he could show the room to them. This fact did not escape the investigation authorities.

Three days after police discovered Ms. Watanabe's body, Govinda learned that the police were looking for him, so he voluntarily went to the police station for questioning. He was then arrested for a different reason -- staying in Japan after his visa had expired.

During his detention, Govinda was examined mostly about the woman's murder and questioned little about the illegality of his overstay, even though it is illegal for police to investigate a suspect for crimes unrelated to the original charge for which he or she was arrested.

Day after day, Govinda endured questioning by the police about



the murder, which he denied having any knowledge of. On May 20, the public trial for his illegal overstay was held, and on the same day, he was put on probation. If this had been an ordinary case of a foreigner on probation for an overstay indictment, he would have been taken to the Immigration Office to be repatriated. The treatment should have been the same for Govinda. However, just after the probation decision, Govinda was arrested for the murder of Ms. Watanabe during the course of robbery. Thus began Govinda's long fight for acquittal of the false charge against him.

More than 30 public hearings were held between October 1997 and January 2000. On April 14, 2000, the Tokyo District Court proclaimed Govinda "not guilty" because there was not enough evidence to prove that he was guilty of the murder. On hearing the judgment, Govinda jumped with joy. After the dismissal of the court, he bowed deeply to the three judges and said, "Arigato gozaimasu" (I thank you very much) in awkward Japanese.

If the story had ended there, it would have been a happy conclusion despite Govinda's bitter three years in detention.

Instead, the prosecution appealed the case to the High Court and requested the court to detain Govinda to prevent him from being sent home. Japanese law does not allow an innocent defendant to be detained. Govinda's counsel, of course, opposed his detention.

The 4th Criminal Bench of the Tokyo High Court accepted the appeal and decided to detain Govinda and transfer the hearings to the Court of Intermediate Appeal. The media widely reported Govinda's detention and pointed out its problems.

The identical bench of the Tokyo High Court that granted the prosecution's request for Govinda's detention presided over the proceeding. Chief Judge Toshio Takagi accepted almost all of prosecution's evidence while rejecting the defendant's exhibits.

On December 22, 2000, the 4th Criminal Bench of the Tokyo High Court reversed the decision of the District Court and pronounced Govinda "guilty, with life imprisonment".

Govinda immediately appealed to the Supreme Court, and the case was transferred to the Third Petty Bench of the Supreme Court.

In July 2001, the Statement of Grounds of Final Criminal Appeal was submitted by his defense team to the Supreme Court. Govinda now awaits the decision of the Supreme Court.





## Chapter 2: The case against Govinda

In April of 2000, Judge Toshikazu Ohbuchi of Tokyo District Court found Govinda not guilty of the murder of Ms. Yasuko Watanabe after nearly three years of deliberations. After considering the circumstantial evidence and inconsistencies in the prosecution's case, the Tokyo District Court based its ruling on the principle of "beyond a reasonable doubt".

In December of 2001, the High Court, presided over by Judge Toshio Takagi, overturned the lower court's acquittal, found Govinda guilty of murder, and sentenced him to life imprisonment.

Following is a list of the main issues and the District Court's and High Court's responses.

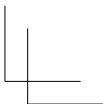
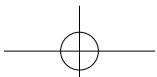
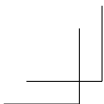
### The discarded condom

Police found a condom containing Govinda's semen in the toilet at the crime scene. After DNA examination identified the semen as Govinda's, the prosecution reasoned that Govinda had intercourse with Ms. Watanabe before he murdered her on March 8.

Although Govinda had paid Ms. Watanabe for sex three times, the condom was thrown away on one of those occasions in late February, not on March 8.

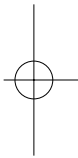
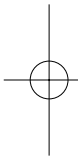
The date on which the condom was thrown into the toilet -- March 8 as the prosecution claimed, or late February as Govinda argued -- became a critical issue. The condom was found at the same time Ms. Watanabe's body was discovered on March 19. Accordingly, if it were proven that it had been 10 days since the condom was used and discarded, the prosecutor's story could be correct, and if it had been approximately 20 days, the defendant's claim would be proven.

The prosecution submitted an expert opinion written by Shigeru Oshio, assistant professor for medical faculty at Teikyo University. He



performed an experiment to examine deterioration of semen over a certain amount of time. After collecting semen from donors, he put the samples into water with cleaning liquid so that he could compare them with the semen found at the crime scene in order to determine how old the evidence was.

After soaking for 20 days in water containing a common cleaning liquid, the sperm samples resembled the sperm taken from the condom found at the murder scene, making it possible that Govinda's claim was true. (After 10 days, only 40% of the samples' tails had degenerated, while after 20 days, about 80% of the samples' tails had degenerated.) However, Professor Oshio then admitted that he did not recreate the exact conditions found at the crime scene. He said that although the water in the toilet had been dirty, he had used clean water for the experiment. "Consequently, it is conceivable that the filthy water could have caused the semen to degenerate more quickly than clean water," he said.

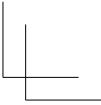
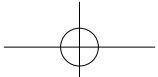
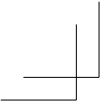


His theory that the filthy water caused quicker degeneration was merely an assumption. He should have retested the semen under the same conditions as those existing at the crime scene. In fact, he did not even intend to do so.

Professor Oshio's expert opinion was illogical, but the testing itself was meaningful: The outcome of his test contradicted the prosecution's theory and indicated that the condom had been discarded more than 20 days earlier. At the same time, a memo found in the victim's belongings also corroborated Govinda's claim. The memo indicated that she had a foreigner as a customer on February 28. Both the semen verification and the victim's memo indicate that Govinda met her at the end of February.

*District Court's ruling:*

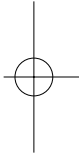
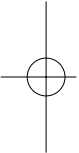
Presiding Judge Ohbuchi pointed out in his ruling that "based upon



the experiment results, there is no reason to believe that the semen had more likely been left for 10 days than for 20 days." Therefore, the court rejected the prosecution's theory.

*High Court's ruling:*

Judge Takagi's ruling argued as follows: "Taking into consideration the differences in the environment of Oshio's testing and the actual conditions, it is hard to determine the elapsed time from simple comparison of numerical data. Consequently, Oshio's theory -- that filthy water could have affected the semen and made it deteriorate in 10 days into the condition of the 20-day-elapsed semen in clean water -- is adequately acceptable."



As mentioned previously, the court should have required Professor Oshio to perform another experiment under the proper conditions to prove that the filthy water affected the semen. Moreover, the High Court had rejected the defense's demand for a court-appointed expert to evaluate the semen. (Oshio was the prosecution's witness.)

On one hand, the court rejected the defendant's request for scientific justification; on the other, it accepted Oshio's irrational opinion. Judge Takagi seemed uninterested in scientific examination.

The defense submitted a new expert report to the Supreme Court written by Professor Shigemi Oshida of Nippon University's medical faculty. Professor Oshida studied the deterioration of semen under circumstances similar to those at the crime scene. His results proved both Oshio's opinion and Judge Takagi's assumption wrong. He found no marked difference when comparing the deterioration of semen in both dirty and clean water.

### Missing condom package

Another enigma was the fact that investigators discovered no

wrapper for the condom at the crime scene.

*District Court's ruling:*

The judges' opinion considered the fact that the condom wrapper was not left behind. Presuming that Govinda killed Ms. Watanabe, he was clever enough to take the condom package with him, but not clever enough to destroy more critical evidence -- the used condom -- although he could have easily flushed it away. The ruling pointed out that this question remained inexplicable.

The judges added that it would be easier to believe that the perpetrator flushed the condom away along with the package, so the abandoned condom had nothing to do with the crime. This theory also corroborates Govinda's statement: he left the condom on a certain day in late February when he had intercourse with Ms. Watanabe.

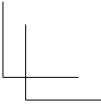
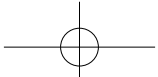
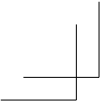
*High Court's ruling:*

In his argument against the District Court's opinion, Judge Takagi claimed that the murderer could have simply forgotten about the condom, or that he possibly did not realize that the condom could serve as evidence. The judge also argued that the condom wrapper was so small that he could have easily put it into his pocket.

But if the true culprit mistakenly left the condom, why did he bother to go away with the package? The Takagi ruling failed to properly explain this issue and refute the original judgment.

### Hairs of an unknown person found in the room

Police investigators found human body hairs at the crime scene. DNA tests proved that the hairs did not belong to Ms. Watanabe, Govinda or the former resident of the apartment, indicating that another person had also been present in the apartment at some time.

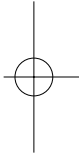
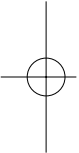


Moreover, one of the hairs had the same blood type, B, as a bit of skin tissue found on Ms. Watanabe's shoulder bag, which was left in the room. No one can deny that this person could possibly be the true killer.

*District Court's ruling:*

Considering these circumstances, the court decided that "although body hairs of the accused were found in the room, it doesn't necessarily prove that he committed the crime. Someone with blood type B, same as Govinda's blood type, could have possibly been in the room on the night of the crime, and this person could have committed the murder."

*High Court's ruling:*

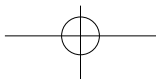


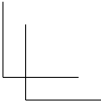
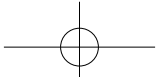
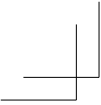
Judge Takagi dismissed the question of a third person's body hairs left at the crime scene. He decided that the "former resident had probably moved without cleaning the room. So, the third party's hairs don't necessarily prove that some other person was in the room on the night of the incident and had committed the crime."

This assumption could be reasonable only if the hairs were proven to belong to the former resident or someone who had visited the room before the murder. However, no one had investigated this possibility at all, and the court appeared uninterested in pursuing the question.

### Commuter pass

A fact that the prosecution initially did not disclose was that Ms. Watanabe's commuter pass was found in the yard of a private residence in Sugamo, Tokyo. At the time of the murder, Govinda lived along the Keio-Inokashira railroad line, which starts in Shibuya and heads west. He commuted to his job at a restaurant located in Makuhari, Chiba prefecture. He never traveled in the Sugamo area, located on the JR Yamanote loop line opposite Shibuya.





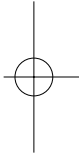
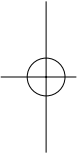
The fact that the victim's pass was found at a place unfamiliar to Govinda also suggests that he is innocent. The prosecution's initial failure to disclose the existence of the commuter pass to the court suggests that they considered the pass an obstacle in their case against Govinda.

*District Court's ruling:*

The District Court's ruling rationally pointed out that "granting that the accused is the true culprit, some questions remain yet to be resolved, such as why he stole not only cash but also the pass, and why he went all the way to Sugamo, an unfamiliar area to him, to throw the pass away."

The prosecutor invented awkward stories to explain these questions, such as, "Govinda discarded the pass after he unsuccessfully tried to convert it into cash."

The decision rebutted these explanations as follows:



"Actually, the perpetrator seems to have managed matters prudently. For instance, he did not take the victim's bag, but took only the cash from the wallet. On the contrary, according to the prosecution's description, he took the pass without consideration and tried unsuccessfully to make money. Such a hit-or-miss manner doesn't match the criminal's composed behavior

"Assuming that he chose to throw away the pass at a strange place for him, the question of why he left it at a prominent site such as the yard of a private residence -- as if he wanted the pass to be found easily -- still remains unexplained. He could have thrown it away at a more secret site or concealed it at some out-of-the-way place. Moreover, if the pass were discarded in an attempt to confuse the investigators, it seems very difficult to explain why he took the pass and cast it away later while he left the victim's shoulder bag, with her employee ID card in it, at the crime scene. The prosecution also failed to give convincing reasons for

this question."

*High Court's ruling:*

Judge Takagi admitted that "the question of why the pass was left at an odd site still remains an enigma. If we could find an answer to this riddle, the incident would become clearer." He continued, "However, in reference to the connected evidence, it is obvious that the issue doesn't seriously hinder us from convicting the accused."

Although he admitted that the commuter pass issue was an obstacle, Judge Takagi decided that Govinda was guilty.

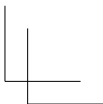
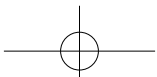
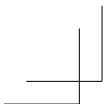
### The key to the crime scene

One of the prosecution's arguments concerned whether or not Govinda possessed the key to the homicide scene on the day of the crime.

According to the prosecutors, Govinda was the only person who had the key to Room 101 of Shibuya-so, where Ms. Watanabe was strangled to death during the night of March 8, 1997. Thus, he was the only person who could have entered the room during that time. This led to the conclusion that Govinda murdered her.

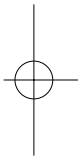
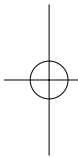
The fact that Govinda once had the key to Room 101 of Shibuya-so is not disputed. At that time, Govinda was living in a flat next to Shibuya-so with four Nepalese friends. His sister was coming to Japan, and because he wanted to live with her, he asked his roommates to find another place to live. To help his friends find a new home, Govinda asked the superintendent of Shibuya-so, with whom he had become acquainted, to give him the key so that he could look at the room. The superintendent gave the key to Govinda, and Govinda returned it to him on March 6, two days before the crime.

However, the police intimidated one of Govinda's friends into falsely



stating that Govinda returned the key later than March 8, the alleged date of the crime. In fact, Govinda had asked Lira, one of his roommates, to return the key to the superintendent. Investigators had screamed at and beaten Lira while they interrogated him for a long period. Eventually, Lira was forced to recant his earlier statement, in which he declared he returned the key on March 6, and sign a false deposition.

The prosecutor presented the fabricated deposition to the court in an attempt to prove that Govinda had the key when the crime took place. According to the prosecutor's version of the story, Govinda himself, not Lira, returned the key on March 10. If what the prosecutor had claimed were true, it would mean that Govinda killed Ms. Watanabe on March 8 and returned the key to the apartment, where the body still lay, on March 10. It is hardly conceivable that a murderer would hand over the key to the crime scene only two days after the crime.



After receiving assistance from a lawyer, a sincere advocate for foreigners' human rights, Lira was encouraged to tell the truth. He took the stand in court and testified before the judges that he, not Govinda, returned the key to the superintendent on March 6. He also testified that the police coerced him into making false statements against Govinda, and he described in detail how the police officers assaulted him during the questioning.

More importantly, Room 101 was unlocked when the body was found, meaning that anyone could have entered the room. The arguments about whether or not Govinda had the key or when he returned the key are therefore meaningless, because anyone could have entered Room 101 during the period in which the crime took place.

The prosecutors claimed that Govinda lied when he declared that he returned the key as early as March 6. However, as mentioned above, the room was unlocked, so anyone could have entered the room.



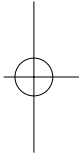
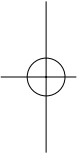


## Circumstances that point to Govinda's innocence

While the prosecution's theory is hardly convincing in the light of the evidence, we can find many circumstances that indicate Govinda's innocence.

Although he was a migrant worker with an outdated visa in Japan, Govinda had a loving family in Nepal who would welcome him home at any time. He was free to return home whenever he pleased. He could have easily escaped the charges if he had left Japan immediately after the crime.

Instead, he kept living next door to the crime scene and working as a waiter at the same Indian restaurant. In addition, Govinda witnessed many police officers investigating the crime scene on March 19. He was even questioned by one of them. At this point, it was still possible for him to flee. However, he did not try to escape. Instead, he voluntarily appeared at the police station in order to explain the circumstances.



## Chapter 3: Torture and Forced Testimony

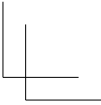
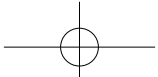
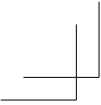
The media and human-rights organizations such as Amnesty International have harshly criticized the investigation of Govinda and his roommates. In a public statement dated May 16, 2000, Amnesty International called for "an independent investigation into Govinda Prasad Mainali's ill-treatment by Japanese police and into reports that several key witnesses in this case were also beaten and intimidated into making false confessions."

Once the police suspected that Govinda was the murderer, they arrested him for overstaying his visa. They interrogated his roommates at the police station for hours. All of Govinda's roommates were in vulnerable positions -- some had overstayed their visas, some had illegally entered Japan, and some had short-term visas, which did not permit them to work. They had no choice but to go to the police station and be interrogated every night after work.

The police threatened Govinda's roommates when their statements did not support the prosecution's case. When interrogating Govinda's roommate Lira, the police repeatedly told him that "you will not be able to come to Japan again" and "we will keep you longer if you don't behave", and asked Lira to change his testimony.

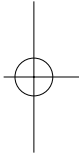
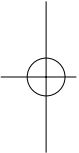
Along with unreasonable interrogation and threats, the police shouted at, beat, and kicked the Nepalese roommates to produce statements supporting the prosecution's case. Lira and the other roommates confirmed these violent acts by the police at the court hearing.

Because of these illegal interrogations, Lira was forced to sign a false statement about the date when the apartment key was returned. Though Lira's initial statement said that he returned the key to the superintendent on March 6, he was forced to deny this fact in a second



statement after being interrogated, threatened and treated violently for long hours.

Govinda was also the victim of illegal interrogation. Although he was detained for overstaying his visa, he was investigated for murder, which is illegal. The prosecutor did not allow him to see an attorney. The attorney filed a state redress suit for this and won. The court admitted the illegality of the prosecutor's hindrance of the attorney's visit to Govinda (Tokyo District Court, March 23, 1999).



Such treatment, particularly for foreigners, is nothing new. In a 1997 report on the ill-treatment of foreigners in detention in Japan, Amnesty International stated that "foreigners in Japan are at serious risk of ill-treatment at the hands of the authorities. Foreign nationals held in police custody on suspicion of having committed a criminal offence have been beaten, denied access to interpreters and lawyers, forced to sign statements in languages they did not understand, and have been punished for attempting to seek judicial redress for alleged human rights violations."

## Chapter 4: Detention after acquittal

How could the Japanese justice system allow Govinda's detention even after the court found him not guilty?

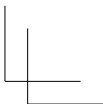
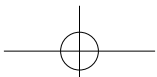
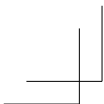
After the Tokyo District Court acquitted Govinda in April 2000, no legislation could have justified his further detention. The Criminal Procedure Law clearly states that once a court finds someone not guilty, the warrant of detention immediately loses effect (article 345). Therefore, Govinda should have been released without any conditions.

Because he was a foreigner with an outdated visa, Govinda was transferred to a facility of the Tokyo Immigration Bureau in order to prepare for deportation to his homeland, Nepal. At this time, the prosecution filed a request for another detention, an unusual move with no legal ground.

According to the Criminal Procedure Law (article 60), one cannot be detained without "evident suspicion of a crime". Govinda was found not guilty after a three-year trial, so nothing could justify his detention. Therefore, the Tokyo District Court rejected the prosecution's request and did not grant a detention warrant.

Unrelenting, the prosecution appealed to the Tokyo High Court. The 5th Ad-hoc Bench of the High Court rejected the request for a detention warrant, reasoning:

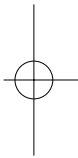
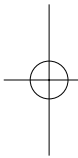
"The article 345 of the Criminal Procedure Law provides that, once the court finds someone not guilty, the detention warrant should immediately lose its effect. This provision should be interpreted that the court's decision must be esteemed more than anything else, so the accused should be released even if the prosecution appeals to higher court. Therefore, if the court allows reinterpreting the provision as if an accused person could be re-detained after his acquittal without critical circumstances, the law would be actually dead."



(The Japanese justice system allows the prosecution to appeal when they lose their case. This is not regarded as a violation of double jeopardy; whether it is right or not is quite another problem.)

The situation changed after the prosecution, seeking a guilty verdict, appealed the case to the Tokyo High Court. The prosecution made a third appeal for Govinda's detention to the 4th Criminal Bench despite the fact that the 5th Ad-hoc Bench of the High Court had rejected their request.

Within one day of receiving the records of the original trial from the lower court on May 2, 2001, the 4th Criminal Bench decided to open a hearing from the defendant on May 8. This kind of hearing is usually held as a conventional procedure to justify the detention, meaning that the Tokyo High Court had forejudged that Govinda was subject to "evident suspicion of a crime."

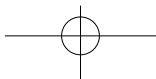


It had taken three years for the Tokyo District Court to find Govinda not guilty, yet the Tokyo High Court reversed the judgment after examining the case for less than a day. It is difficult to imagine that three of the 4th Bench judges could examine all of the records within a day.

Govinda's hope to return home, where his family was eagerly waiting for him, was shattered after the court decided his further detention on May 8.

Govinda's counselors immediately filed an opposition. They claimed that the law allowed detention of a person only if (1) he or she were proven to be subject to "evident suspicion of a crime" and (2) if the prosecution could prove that he or she met at least one of three conditions: without fixed abode, likely to attempt destruction of evidence, or likely to abscond.

Because Govinda was found not guilty after a three-year trial, he could not possibly be subject to "evident suspicion of a crime". Moreover, at that time, the prosecution had not even submitted the petition of appeal yet. Without any sources, how could the Superior



Court determine that he was very likely to be a criminal?

Govinda obviously had a fixed abode. Although his apartment lease had been canceled because of his forced absence, he had his own home and family in Nepal. In addition, he had no reason to destroy any evidence -- there was no evidence to be destroyed. Every piece of evidence for the prosecution's case had been submitted to the court and examined thoroughly during the first trial.

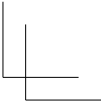
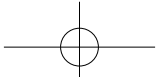
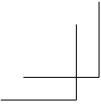
The 5th Bench expressed its concern about the possibility of Govinda and his former roommates conspiring to fabricate a consistent story, but all of his roommates had been deported to Nepal. How could they commit perjuries in spite of their absence in Japan? In addition, the Tokyo District Court had already examined their testimonies at large.

Moreover, Govinda didn't attempt to flee; the Japanese immigration authority intended to deport him to Nepal. He declared that he was willing to appear whenever the Japanese court summoned him.

Regardless, the 5th Criminal Bench (not identical to the 5th Ad-hoc Bench mentioned before) of the Tokyo High Court rejected Govinda's appeal without any convincing explanation. In addition, the bench actually swept aside the lower court's conclusion with no further evidence or deliberation, declaring that "by reference to the court records, adequate evidence to condemn the accused can be found."

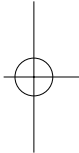
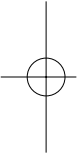
Therefore, the defense team made a further appeal to the Supreme Court demanding the reversal of the unconstitutional ruling. However, the Supreme Court eventually affirmed the admission of Govinda's post-acquittal detention by a slim 3-to-2 vote. Two out of five justices, Justice Mitsuo Endo and Justice Masao Fujii, voted against the detention.

Justice Endo criticized the major opinion as violating both the Criminal Procedure Law and the judgment by the original court. In his dissent, he asserted:



" article 345 of The Criminal Procedure Law provides that, once a given court finds the accused not guilty, a detention warrant loses its effect immediately, even before the acquittal becomes final. The ethos of the provision should be interpreted that the court ruling must be respected more than anything else. So an assumption that the higher court could allow re-detention of the acquitted person easily has no place to be adopted.

It is invalid for an appeal court to grant a detention of the accused based on a brief study on the trial records before opening the substantive hearings, because that virtually means ignorance of the whole process in which lower court made efforts to find the truth."



Another minority justice, Masao Fujii, also condemned the decision: "It is unacceptable to detain the accused, whom the first trial found not guilty, based on the cautious examination of evidence. If the appeal court abuses its power to grant such detention on the thin ground of a glance over the court records, that would be nothing but undue contempt to the first court."

If Govinda was Japanese, he would not have been re-detained after acquittal. Justice Endo's dissent pointed out that "unless the accused were a foreigner with an outdated visa, re-detention could never have happened to him."

Others agree. "It's not possible, legally, to detain a person who has been acquitted, but they did it anyway," said Hideki Morihara, an Amnesty International coordinator in Japan, in *The Washington Post* (Dec. 31, 2000). "It's a breach of Japanese law and international law. If this kind of practice is allowed, it's quite dangerous."

## The Price of Life

A Nepalese man has been working in San Francisco for three years. Amazingly, he works seven days a week, days and nights, and comes back to his apartment just to sleep. The only luxury that he allows himself is calling his family in Nepal, as well as other friends in the States and abroad.

Before coming to San Francisco, he was a land-surveying engineer in Kathmandu. He had left his family behind in his hometown, far from the capital. But no matter how hard he worked, he could earn only enough to pay his rent and his own living expenses, and he could barely support his family. He decided to leave Nepal to work in the United States. After working diligently for three years, he bought a piece of land in the outskirts of Kathmandu. His aim now is to build a house on his land.

He occasionally calls his friends in Japan, asking them to visit him in San Francisco. "I'll send you a plane ticket," he says over the phone, "because I'm working now, and I have money."

Those who have money lend it, and those who don't, borrow from them. This is not unusual in Nepal, where it is done all the time. Those who borrow don't feel ashamed, and those who lend aren't arrogant. Perhaps it is the Nepalese character, a Nepalese tradition. The teachings of Hinduism, which more than 85% of Nepalese people practice, might have something to do with it. Hindu scriptures teach that doing good to others shows respect to the gods and is an act of virtue. Hinduism is more than just a religion; it is a code of conduct showing people how to behave to maintain social order. Such Hindu teachings are deeply embedded in the minds of Hindu Nepalese.





Govinda Mainali was born to the Brahman caste, which strictly forbids killing of any kind. Govinda's conviction truly shocked Nepalese society, and most questioned whether it could ever be possible. It was truly hard to believe that Govinda would kill anybody for a small amount of money.

Among Nepalese people, there are networks formed among neighbors, relatives and friends, and lending and borrowing money through these networks is common. The police investigation revealed that money was frequently loaned and borrowed among Govinda's friends at work and his roommates. The prosecution claims that the motive for the murder was money, but even if Govinda was short of money at the time the murder took place, there was no reason for him not to ask his friends to lend him money as he usually had done.

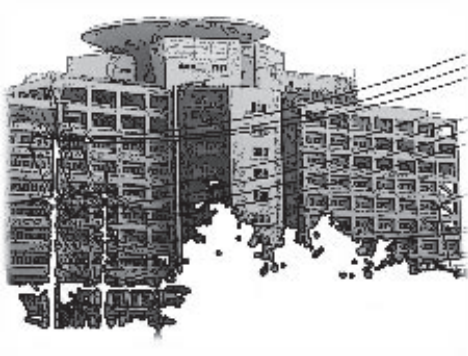
It is difficult to believe that anyone who is acquainted with Nepal, its people, and the character of Govinda could believe that he could kill anybody for 40,000 yen.





many times in the past five years.

In recent years, Govinda has started to learn Japanese characters. The first thing he learned to write in Japanese? "I did not do it."



Tokyo Detention Center

## Govinda's homeland

"The children's eyes were so clear and sparkling!" Many people who visit Nepal use these words to describe the Nepalese children.

Nepal, known for the great Himalayas, is a multiethnic, multilingual nation with a constitutional monarchy. It is the only country that designates Hinduism as its national religion. However, Buddhism is also widely practiced in Nepal, and the two exist in harmony without conflict. Nepalese people are very devoted to their religions.

During the dry season (September through May), snow-capped Himalayan ranges may be viewed from Kathmandu Valley. The breathtaking grandeur of the Himalayas overwhelms even frequent visitors. During the rainy season (June through August), a bright green carpet covers the terraced paddies of the central hill region. You can almost feel the heartbeat of Mother Nature.

However, natural beauty is not the only aspect of Nepal that attracts thousands of tourists from all over the world every year. The warmth and kindness of the Nepalese people is known throughout the world. The Hindu people consider their guests gods, and even the poorest treat their guests with warm hospitality.

Nepal is sandwiched between the giant nations of China and India. The area is about the twice the size of Hokkaido, the northernmost island of Japan, with a population of 23.2 million, according to the 2001 census. The population is increasing at the rate of 2.27% a year. Eighty-nine percent of Nepalis live in rural areas and are engaged in either agriculture or pasturage for their livelihood.

Nepal can be divided geographically into three elevations: the low, flat, sub-tropical river plain of the Ganges in south, the central hill region, and the rugged Himalayas in north. Because the country



consists mostly of either forest or steep mountainous terrain, arable land comprises only about 20% of the entire nation.

Tourism is the primary source of income for Nepal, along with nominal income from exporting carpets and clothing. As a result, more than 50% of Nepal's total budget depends on foreign aid. Most people live on the edge of survival. According to the United Nations, Nepal's GNP of US\$210 ranks it among the poorest nations of the world. Rapid population growth adversely affects people living in rural areas because of the limited food supply, forcing them to migrate to big cities seeking jobs.

However, jobs are not easy to find even in cities, and even if one is lucky enough to find work, the pay is not enough to send to the family after putting aside money for rent and food. As in many developing countries, male family members often migrate to other countries to work to support their families. By living abroad for several years and working long hours, many men are able to buy a patch of land and build a simple house. This is a dream that most people living in Nepal can hardly materialize. Therefore, thousands of Nepalese leave their motherland with the hope of making their dreams come true.

Govinda came to Japan seeking an opportunity to realize his dream like all others. He worked harder than he had ever worked before. His dream was almost in his hands, and he was getting ready to go back to his family in Nepal when he was arrested for a crime he did not commit.

"As long as there is life, there is hope." This is a saying often heard in Nepal. Perhaps this is why the Nepalese children's eyes are so clear and bright - because they have not lost hope. What else do they have but hope, when there is not even a straw to cling to?

Govinda tries to keep his spirits high by remembering that saying. We must continue to fight for his freedom so that his hope becomes a reality.





that for Japanese --76.1 %. In addition, the rate of foreigners detained by the time they are delivered judgments amounts to 97.7 %, which is also much higher than that of Japanese (61.4%). When a foreigner is on trial, even though his or her crime may be a minor one, he or she is often detained until the trial is over.

It is said that many people are falsely indicted under the Japanese criminal justice system. We can suppose that, because of discrimination, prejudice and language barriers, foreigners are more vulnerable and therefore more likely to be falsely charged.



## The Asia Pacific NGO Networking Meeting

A representative for Justice for Govinda, Ms. Junko Hasumi, attended the Asia Pacific NGO Networking Meeting for World Conference Against Racism, Discrimination, Xenophobia and Related Intolerance (WCAR) in Katmandu, Nepal, from April 27-29 of 2001. Ms. Hasumi made an appeal to the world about the injustice committed against Govinda in Japan.

Ms. Hasumi joined the workshop on "Racial Discrimination and Xenophobia against Migrant Workers" and presented a detailed report on the Govinda case. She made it clear that this is undoubtedly a case of racial discrimination. On the last day of the conference, the Govinda case was compiled into a resolution, which was adopted together with other resolutions presented at the Conference.

During this visit to Katmandu, Ms. Hasumi met with prominent people such as Professor Kapil Shrestha of the National Human Rights Commission and Sudip Pathak, president of the Human Rights Organization (HURON), as well as representatives of other human rights groups. She explained the case and discussed the possible defects of the Japanese justice system.

With the help of Kunda Dixit of the renowned weekly magazine The Nepali Times (the first media to feature the Govinda case) and members of human rights groups, a press conference was held and about 35 reporters of major Nepali media attended.

On the following day, the two largest English newspapers in Nepal and four major Nepali newspapers reported on the Govinda press conference. At this press conference, Prof. Kapil Shrestha commented that "Govinda has been denied fair justice. He should be released immediately. Such incidents of re-detention will cause insecurity among the Nepalese people staying abroad."







starts crying, and asks people close by to "bring my son here, I must embrace him once again before I set out for my eternal journey". His reaction is quite natural. Who can deny his desire to see and embrace his beloved youngest son, especially when he is 80 and sick in bed? He doubts whether he will see his son before he dies. Sometimes we hear him murmuring Govinda's name while sleeping. We can tell these stories of suffering for days.

It is unbelievable that a member of our family, who has enough land to cultivate and enough resources to support his family, needs to kill someone to snatch what amounts to about 350 US dollars. We agree that Nepal is poor, but it is unlikely that a member of a family like ours would kill a person in their host country. Journalists and media teams from Japan have investigated this fact several times. None of these teams was convinced that the cause of this alleged crime was the poverty of Govinda's family.

We appeal once again to all friends and well-wishers to continue this fight against injustice by strengthening your united voice for his early release. Let us try to end this tragedy together as early as possible.

On behalf of the family of Govinda, we thank you all and appreciate your untiring efforts for the sake of humanity. We look forward to your cooperation and assistance in the days to come.

Very sincerely yours,  
Govinda's Family  
Illam, East Nepal.







