

# An Objection to the Supreme Court Ruling on the “Murder of a TEPCO Employee”

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“I never did it!” With an all too brief statement, Govinda was finally thrown into the abyss, impeaching the self-proclaimed “infallible” justice system in Japan that suppressed the truth.

## Self-Destruction of the Justice System

As of October 20<sup>th</sup>, 2003, the Supreme Court rejected the appeal filed by the Nepali defendant, Govinda Prasad Mainali, and the five members of his defense team. Govinda was previously given a life sentence in the case involving the murder of a TEPCO employee. The appeals document was submitted in July, 2001. When that story came out as a news flash in the evening of the following day, I was in Sapporo, Hokkaido. I shook with anger when a newspaper reporter in Tokyo called me on my cell phone to tell me of the shocking news of Govinda's life imprisonment being finalized. I said the following to the reporter who asked for my comment.

--- This ruling is totally unjust. Even though the District Court acquitted Govinda, the High Court continued sloppy deliberations with the presumption of guilt to come out with an unacceptable ruling of a life sentence, overturning the acquittal. Moreover, even the Supreme Court supported the High Court ruling. Starting next year, a series of reforms is to be introduced to the judicial system to allow for more participation of the citizens. This ruling totally goes against that trend and it is tantamount to the self-destruction of justice. After the acquittal given by the District Court, Govinda should have been deported immediately for illegally overstaying his visa but instead he was re-detained. There is a suspicion that such action is unconstitutional. The rejection of his appeal only highlights the injustice of the whole procedure.

In the afternoon of October 20<sup>th</sup>, the day before I heard the news in Sapporo, the word went out to the Legal Press Club that the appeal had been unanimously rejected by the four judges on the Third Petty Bench of the Supreme Court. The Legal Press Club is located on the second floor of the Courthouse Joint Building in Kasumigaseki, Tokyo. Next to the Legal Press Club is a small room used as a branch office of the Public Relations Department of the Supreme Court Administrative Office. Normally, sometime in the afternoon, the ruling pronounced by the Supreme Court that day arrives to the branch office in the form of a file.

Outsiders have no idea whatsoever as to when the Supreme Court ruling is issued. Because of this, without fail, the reporters standing by at the Legal Press Club would closely look at the file that had arrived from the Supreme Court that day. The legal reporters who knew of the rejection of the appeal the previous day, however, did not report the story the same day.

The notification of the rejection was given to Govinda himself in the afternoon of the following day, on the 21<sup>st</sup>. The document was mailed from the Supreme Court in Hayabusa-cho in Chiyoda Ward to the Tokyo Detention House in Kosuge, Katsushika Ward. Because of this time lag, there is an unspoken rule that the reporters should not break the news outside the Press Club, even if they knew it the day before.

There was no prior notification to Govinda himself or to his defense counsel. The judiciary authorities and the press club alone were in the position to know it beforehand, exclusively. Normally,

having this kind of collusive relationship is referred to as being an accomplice.

I have been watching this case since March 1997 when the incident first broke out. Over the course of about seven years, the events developed as follows: Govinda was arrested and later indicted on charges of murder and robbery in June 1997; he was acquitted at the District Court in April 2000; the High Court reversed the acquittal, sentencing him to life imprisonment in December the same year; and the Supreme Court rejected the appeal this time [October 2004]. From my view as someone who has followed this case closely, the legal reporters are completely taken in by the power and are simply passing on the information that the authorities let out to them that is convenient to the authorities.

As far as I know, no reporters have actually gone to the Maruyamacho area of Shibuya Ward, where the murder took place, raising doubts of the reporting in this case. No reporters have gone to Kosuge to interview Govinda in detention to hear his cries of innocence.

When I made the comment on the rejection of Govinda's appeal, I expressed my anger to the Supreme Court who turned him away without seeing him even once. At the same time, I intended to express my pent-up fury towards the legal reporters.

## **A Song of Hope**

At 11:30 a.m. on the 21<sup>st</sup>, when the legal reporters who already knew about the rejection were writing stories for the morning paper for the 22<sup>nd</sup>, Ms. Naomi Yoshikawa went to see Govinda, having no idea at all that the decision had already been made. She is a member of "Justice for Govinda - Innocence Advocacy Group." At this time, Govinda himself had not been notified of the decision, either. Naturally, the exchange of words between him and Ms. Yoshikawa was no different from what had taken place during the usual visits.

The minute he saw her, Govinda thanked her for writing out the lyrics of his favorite song in roman letters and sending them to him. At the Tokyo Detention House, they turn on the radio on a regular basis and let the detainees listen to a music program. Govinda had mentioned that he likes the song "Nada Sousou (Tears Trickling Down)" by an Okinawan singer, Rimi Natsukawa.

Ms. Yoshikawa started visiting Govinda in March 2003 when she accompanied Radha, Govinda's wife, to Kosuge. Radha was visiting Japan at the time. When Govinda mentioned the song, Ms. Yoshikawa remembered her first visit then and said, "The song sounds like it's about you and Radha. It's sad, isn't it?" She later wrote out the lyrics and sent it, adding a message that said, "I hope the two of you can see each other again soon."

The song has a sentimental poem that goes like this: "I think of that smile on a bright sunny day, on a rainy day; even though the memory is distant and fading, I'm still looking for the traces of you; tears trickle down my cheeks when I can see you in my mind's eye." This is followed by a refrain that goes straight into the listener's heart: "So lonely, missing you so much, I'm full of feelings for you, tears trickle down; How I want to see you, see you, I'm full of feelings for you, tears trickle down."

Govinda received the lyrics prior to Ms. Yoshikawa's visit. He said to her that he had listened to the song as he followed the written lyrics. He said it had cheered him up greatly. Says Yoshikawa: "From early on, I have told Govinda that my daughter was getting married. He sympathized with my feelings and said, 'I want to share the celebration with you, so could you please send some cake in? The cheapest is fine with me.' He never fails to be considerate and caring to others even though he is in a situation where anyone could lose his cool. After talking about my daughter's getting married, we moved on to talk about his daughters who he has left behind in his country. He said with a smile on his face that his elder daughter wants to be a doctor when she grows up and that he wants to help her make her dream come true. But then, his last hope, the Supreme Court, coldly declared that there was

no point in hoping any more. It's too much to bear to think that what we did that day, talking about the hopes for the future, might have made it even harsher for him to take in the shock. After saying, 'See you next week, take care,' and waving goodbye to me with a smile, he was cast into hell, all alone."

## Despairing Notification

On the morning of the following day, the 22<sup>nd</sup>, the defense counsel and the core members of the "Justice for Govinda - Innocence Advocacy Group" went to see Govinda after learning of the rejection from the media. The moment he saw them, Govinda showed the document declaring the Supreme Court decision by putting the sheet of paper against the transparent acrylic board dividing the visitors and the detainee.

<Decision

Nationality Kingdom of Nepal

Address Undetermined

Restaurant Employee

Govinda Prasad Mainali

Born on October 21<sup>st</sup>, 1966

Main Body

The appeal is rejected.

Of the total number of days spent in detention pending trial, 700 days will be counted towards the sentence.>

The statement seemed to have been prepared to specifically target his 37<sup>th</sup> birthday. Govinda incessantly insisted that the Japanese justice system is unjust as he sobbed, showing the unbearably short statement that dashed his hopes and dreams for the future.

"The Supreme Court is a place where the brightest people in Japan are, isn't it? And that court is sending an innocent man to jail? The jailhouse is a place where people who have done bad things are sent to, isn't it? I haven't done anything wrong, how can I spend my life there? I won't be able to see my aging parents alive in this world anymore."

The news of the rejection of the appeal was conveyed immediately to Govinda's family in Nepal through the Japanese media. I called Urmila, Govinda's elder sister. I had seen her in Kathmandu. Choking back tears, she said, "When a Japanese TV reporter called me, my hands started to get sweaty and I couldn't say anything for a moment. I can't believe Govinda is made a murderer. When I called my brother Indra, he was speechless, too. Still, he tried to give me words of encouragement.

And then I called my sister-in-law, Radha, in Ilam. When she heard what I had to say, she started crying on the phone. And she called out Govinda's name again and again. When I heard that, I felt so sorry for my gentle brother. Govinda didn't do anything wrong. What I loathe very much is the Japanese police and the court that made Govinda the perpetrator. But only God knows the truth. For now, I can only pray to God, along with Radha and Indra."

Indra didn't seem to have recovered from the shock, either.

"When we heard the sad news, all went quiet in the house, nobody said anything. After the silence, everybody started crying at the same time. Tears started gushing out of my eyes and I couldn't stop crying. My 76-year-old mother and my 82-year-old father in Ilam, Govinda's wife, Radha, and his children felt exactly the same way. I could hear the whole family crying on the phone. They were crying so loudly that the neighbors passing by went in to the house to see what was going on. Don't

trials in Japan pursue the truth? We, as his family, remain totally unchanged, believing in Govinda's innocence. I will go to Japan as soon as possible. I want to see Govinda at once."

According to the "Justice for Govinda - Innocence Advocacy Group," by October 31<sup>st</sup>, over the ten days since the rejection of the appeal was announced, more than 300 letters came in the mail to the Tokyo Detention House to cheer up Govinda.

## **The Relationship between the Murder and the Semen**

An elite employee of the Tokyo Electric Power Company (TEPCO) by day, a prostitute standing in the streets of Maruyama-cho, Shibuya Ward, by night, Ms. Yasuko Watanabe led a double life. It was on March 8<sup>th</sup>, 1997 that her whereabouts suddenly became unknown. Her corpse was found in Room 101 of Kijyu-so apartment building in Maruyama-cho, on March 19<sup>th</sup>. In the toilet bowl of the apartment was a condom containing semen. The police determined that she was killed late during the night of March 8<sup>th</sup> and a DNA test was conducted on the semen that was left. As a result, the leftover semen was determined to be Govinda's. Govinda admitted to having sexual intercourse with Yasuko Watanabe in Room 101 of Kijyu-so on February 28<sup>th</sup>. But the police never changed their insistence that this sexual intercourse took place on March 8<sup>th</sup>. This point became the most critical issue in the trial and expert opinion was consulted regarding the degree of the deterioration of the semen.

The conclusion was that the head part and the tail part of the sperm left in the condom were completely severed and that it would take more than 20 days for the semen to appear in such a way. To acknowledge that the semen which was found on March 19<sup>th</sup> is about 20 days old since ejaculation means that it decisively corroborates Govinda's statement that he had his last sex with Yasuko and then discarded the condom in the toilet on February 28<sup>th</sup>.

In the trial, the credibility of the notes made in Yasuko's personal day planner was argued as well. She recorded her customers' appearance and how much she was paid in her day planner. But the day planner was not considered to be decisive evidence linking the perpetrator and Govinda directly. The District Court considered these points important and acquitted him.

However, in the High Court, a supplementary opinion was accepted. The opinion stated that it is sufficiently plausible that the toilet bowl, contaminated with E coli bacteria and filled with cleaning liquid, could have hastened the deterioration of the semen. Therefore, it was concluded, even though semen might show such deterioration process in fresh water, it is possible that 10-day old semen might appear to be 20-day old semen if left in the toilet bowl. This became the only piece of decisive evidence that supported the theory of Govinda as the perpetrator.

The defense counsel conducted an experiment in which they asked five Nepalese to provide semen and put the samples in condoms, leaving them in the toilet bowl under the identical conditions. It became clear as a result that the sperm did not break into the head part and the tail part after 10 days, but it did after 20 days.

Also, the initial expert opinion was completely rebutted on another front. It stated that Govinda's sperm was 10 days old on the grounds that the head of the sperm collapses after 20 days but his did not. The results of the experiment showed that the head of the sperm did not collapse after 10 days or even 20 days.

Because of these results, the validity of the District Court ruling was scientifically proven. The District Court acquitted Govinda because the court reasoned that Govinda's semen left in the toilet bowl of Room 101 of Kijyu-so must have been ejaculated 20 days prior to being found, in other words, in late February.

If the reasoning of the High Court, which sentenced Govinda to life imprisonment, were correct, that means that Govinda had to have killed Yasuko on March 8<sup>th</sup>, after which he would have had to take a ride in a time machine to go back 10 days and discard his semen in the toilet. The Supreme Court supported such a ludicrous verdict and finalized his life in prison sentence.

The defense team submitted the complementary expert opinion on the collapse of sperm heads on October 1<sup>st</sup>, 2003. The rejection of the appeal was pronounced only 20 days after that. The fact that the decision was made in such an absurdly short period of time exposed that the Supreme Court did not sufficiently deliberate on the newly submitted opinion by the defense counsel.

Much of the circumstantial evidence was in favor of Govinda. For 11 days until Yasuko's body was found, he continued to live as usual in Room 401 of the Kasuya Building which is not even one meter away from Room 101 of the Kijyu-so Building. What murderer could live like that right by the place where the body of the person he/she had killed lay? Govinda had plenty of opportunities to flee the country after the murder.

Three days after the corpse was found, Govinda voluntarily went to the Shibuya Police Station for questioning, fully aware of the risk of being arrested for overstaying his visa. This fact strongly suggests his innocence. The same can be said for Yasuko's commuter pass that was found in the yard of a private home in Sugamo, far away from the murder site, a week before Yasuko's body was found. Regarding this mystery of the commuter pass being found in a place where Govinda doesn't go, the District Court gave a fair judgment, concluding that the possibilities of a perpetrator other than Govinda could not be denied. However, the High Court flatly refused to admit this, saying that the mystery does not become the grounds for dispelling the theory that Govinda was the perpetrator.

## **“Infallible” People**

Once indicted, the suspect has to be convicted no matter what. The Japanese police and the judicial authorities are obsessed with the fallacy that goes against the trend in the rest of the world. A man can never be infallible. However, the Japanese judiciary is still abnormally fixated on its own infallibility. The Supreme Court is no longer a place where the truth is patiently pursued and justice is fairly secured. It has turned into a place where the self-protection of the justice system and miscarriage of justice are hastily secured.

How do those in the judicial authorities that were involved in the case feel about it now? I went to see the former Chief Judge Toshio Takagi without any appointment. He is the one that overturned the District Court acquittal and sentenced Govinda to life in prison. Takagi retired from the Tokyo High Court in November 2001 and later became a professor at the Law Department of Teikyo University, lecturing on Criminal Law.

I waited for him in front of his research office on the Hachioji campus of the university. When I greeted him as he came back from the classroom, he looked surprised for a moment. He quickly regained his composure.

--The Supreme Court rejected Govinda's appeal. How do you feel now?

“I read the decision made by the Supreme Court. The ruling is totally reasonable. Because the District Court ruling was wrong. Now that the decision is made, it means that the Supreme Court approved of my guilty judgment. I firmly believe that he (Govinda) is guilty. How can there be any room for doubt?”

--What do you think of the unfair treatment of re-detention?

“What are you talking about? This man strangled and killed a woman. The District Court ruling was wrong. The appeals hearing at the High Court properly proved that he is guilty.”

With that, he made his way into his office, so I started to say, “Regarding Govinda, ...” Takagi interrupted me and said in a breath, “There is no way I believe in his innocence, not the slightest bit. How dare him, he strangled and killed a woman. There is nothing more to talk about. Excuse me.”

Takagi shut the door in indignation as he spat out those words.

What about the judges that gave the order to re-detain Govinda, exposing their prejudice against foreigners? The order is highly likely to be unconstitutional. How do they feel about it now? Out of the total of 6 judges that took part in the consultation, there is one enigmatic judge that was first on the side of rejecting the re-detention request but then retracted his earlier decision and took the opposite position in the later consultation.

This judge is named Yasuhiro Muraki. In May 2001, exactly a year after Govinda’s re-detention was decided, Muraki was arrested by the Tokyo Metropolitan Police Department on charges of child prostitution, paying 20,000 to a 14-year-old. Muraki was later convicted on a violation of the Anti-Child Prostitution and Anti-Child Pornography Law. He was given a two-year sentence with a suspended sentence of five years. Moreover, he was dismissed from the position of judge in an impeachment hearing, the first in 20 years.

A judge that was engaged in child prostitution was deeply involved in Govinda’s trial. This fact alone considerably damages the credibility of the judiciary. If they claim that they aim to introduce judicial reforms that make the system more open to the citizens, then the obvious mission of the Supreme Court would have been to send the case back to the High Court after a careful review of the process leading to the decision of Govinda’s re-detention. However, the Supreme Court, the last-resort guardian of the law, closed the gate to the only path that would have led to regaining the credibility of the judiciary. The Supreme Court also took the lead in ratifying an act that can be described as a crime committed by the judiciary.

The impeachment trial forced Muraki out of his official residence for judges in Nakano Ward. He then moved to Yokohama, where he lives in a newly built, high-end condominium near a train station along the Toyoko line. The entrance hall is equipped with fully automatic security locks. The elaborate security precautions, along with the inorganic exterior of the building, reminded me of the Tokyo Detention House which holds Govinda in custody. When I pressed the button, Muraki himself answered the intercom.

--Do you know about the rejection of the appeal?

“I am no longer in a position to say anything about that...”

--Why did you decide to re-detain him?

“I don’t think I have anything to do with that any more. I can’t talk about it. I can’t... Excuse me.”

There was no more response after that. Over his voice, I heard what sounded like young children playing around with each other. In the fall of 2001, during the impeachment trial on child prostitution, Muraki had twin daughters. What I sensed through the intercom was a happy atmosphere surrounding the Muraki family. There was not a speck of a sense of degradation or destitution, something one would associate with a former judge that was dismissed.

## **The Last Visit**

On the following day, November 4<sup>th</sup>, I went to see Govinda at the Tokyo Detention House. Muraki, who had had a decisive impact on the rejection of the appeal but flatly said that he had “nothing to do with it,” was leading a peaceful and quiet life. On the contrary, Govinda was thrown into the abyss headfirst. Against the Supreme Court rejection of the appeal, Govinda’s defense counsel lodged an objection dated October 23<sup>rd</sup>. The objection is usually denied in a week to ten days. At that moment,

the sentence is finalized and Govinda will be transferred to a prison from the detention house. That means that the visit that day was close to the time limit.

In fact, the objection was denied, dated that very day, and Govinda himself was notified on the following day. Visits thereafter became impossible.

Wearing a white zip-up jacket, Govinda appeared in the interview cell. He looked unexpectedly well, having color in his face. But his hair which was full at the time of his arrest has now receded, revealing the cruelty of the time that passed over him since then.

“I didn’t do it. If you say I killed someone, show me the evidence. Even though there is no evidence, they put me in jail. Is that because I’m from a poor country, Nepal? Is that how things are done in Japan? Mr. Sano, please help me.”

Govinda repeatedly said this. As if by a twist of fate, Govinda also has two adorable daughters just like the “child prostitution-soliciting” judge Muraki. The younger daughter, who is turning 10, was born after he left his home, so he hasn’t seen her.

Govinda’s wife, Radha, who wailed when she learned of the Supreme Court decision left Nepal on November 7<sup>th</sup>, with the help of donation made by the “Justice for Govinda - Innocence Advocacy Group.” However, there is a 99% probability that Govinda will have been transferred to a prison by the time she gets to Japan. Once in prison, only family members, in principle, are allowed to visit. Furthermore, visits are restricted to once a month.

It would be one thing if the family lived in Japan. But in the case of Govinda, his family lives far, in Nepal. Naturally, frequent visits are impossible. Govinda has almost completely lost opportunities to have direct contact with his immediate family. He is now locked up in despair in a prison in a foreign country.

In an effort to save Govinda, his defense counsel wasted no time in getting ready for filing a request for a retrial. However, judging from the precedents, the chances of opening the door to retrial are very slim. Govinda’s cries of innocence will likely be muffled in prison until the day of his parole, which is said to take close to 20 years to be granted. By the time he comes back out, he will be close to 60 years old. His mother and father will have passed away, deeply cursing Japan, a country which framed their son for a crime he did not commit. Govinda will have grandchildren without having seen his daughters’ husbands. How can Govinda ever reclaim the precious days that he has lost?