

Govinda Mainali's Conviction Of 1997 Tokyo Murder Set-aside Based On New DNA Evidence

Govinda Prasad Mainali was acquitted by Tokyo's High Court that heard his appeal in one of Japan's most sensational homicide cases of recent times. Mainali was convicted in December 2000 of the March 1997 murder of Yasuko Watanabe.

Watanabe was a 39-year-old college graduate who by day worked as a respected economist for the Tokyo Electric Power Company, while by night she moonlighted as a street prostitute. She was last seen around 11:30 p.m. on March 8, 1997, and her body was found on March 19 in an apartment she used for some of her sexual liaisons. It was later estimated she was strangled about midnight on March 8. The press [portrayed her](#) as a "Robin Hood" of hookers because she charged well-heeled Japanese businessmen as much as \$500, while she charged foreigners doing low paid jobs as little as \$30.

Mainali was a 29-year-old Nepalese working as a waiter in Japan when he was arrested on March 23, 1997 for over-staying his work visa. He lived with other Nepalese workers in an apartment in the same building where Watanabe's body was found. When questioned he told the police that he had paid her twice for sex that took place in her apartment. He told them the last time was on February 28, which was 19 days before her body was discovered.



Yasuko Watanabe

Mainali told the police he used a condom, and his DNA was compared with the DNA of semen recovered from a condom found in the apartment's bathroom. The DNA matched Mainali. His DNA also matched a pubic hair found in her apartment, but which wasn't near her body.

In Japan a suspect can be held incommunicado and interrogated without access to a lawyer for up to 23 days. That is one reason why suspects confess at extraordinarily high rates in Japan, which is reported to have a 99.8% conviction rate for indicted defendants. Throughout his lengthy interrogation period [Mainali claims](#) he was beaten, kicked, and the police tormented him by repeatedly shouting at him that he killed Watanabe. Yet

Mainali didn't crack under the strain of being physically and psychologically abused for an extended period of time. He unwaveringly insisted he was innocent and he didn't make an incriminating statement.

Nevertheless, Mainali was charged with murdering Watanabe and held in custody for more than three years until his trial in the Tokyo District Court in April 2000. The prosecution's circumstantial case was based on his admission to twice being in her apartment to have sex with her, and the positive DNA tests of the semen in the condom and the pubic hair.

Mainali's alibi defense was that on March 8 he got off work at 10 p.m., took the 1-1/2 hour train trip to the neighborhood where he lived, and arrived home between 11:30 and midnight. His housemates confirmed he was there at 1 a.m., and could have been there earlier. No evidence was found in Mainali's apartment or on his clothes tying him to Watanabe's murder.

Mainali's pro bono lawyers presented expert evidence that it takes about 20 days for the head and tail of sperm to separate. They also presented expert evidence that the head and tail of Mainali's sperm in the condom had separated. His lawyers argued that the expert evidence supported that Mainali's sperm had been deposited in the condom about 20 days or more days before it was recovered by the police on March 19, 1997. They argued that evidence corroborated Mainali's statement that he used the condom when he had sex with Watanabe on February 28, 1997 -- 19 days before the discovery of her body and the condom.

Mainali was acquitted based on the court finding that the evidence didn't link Mainali to Watanabe's murder — it only established that at some point in time he had been in her apartment and had sex with her.

Double jeopardy is barred by Article 39 of the Constitution of Japan. However, the prosecution can appeal an acquittal because a higher court's review is considered to be a separate trial. Only an acquittal by the Supreme Court is considered final.

The prosecution appealed Mainali's acquittal. The prosecution submitted the new evidence of an expert opinion that it is possible contamination could have hastened deterioration of the sperm in the condom. On De-



Govinda Mainali after his acquittal
(Prakash Mathema - AFP)

ember 22, 2000 the High Court summarily reversed Mainali's acquittal, and sentenced him to life in prison. When the High Court's verdict was announced [Mainali cried out](#), "God! Please help me. I didn't do it. I didn't."

One of Mainali's *pro bono* lawyers, Katsuhiko Tsukuda, [was quoted after](#) the High Court's ruling, "The system is rotten. The criminal courts are comatose. They do what the prosecutors tell them." Another of Mainali's lawyers said of the ruling, "Even though we don't have faith in the judges, I was shocked by this."

Mainali's case wasn't just heavily reported on in Japan and Nepal, but it attracted media attention around the world. Articles were published in the *Los Angeles Times*, the *Washington Post*, *The Guardian* (London), and other newspapers.

Reporter and writer Shinichi Sano wrote a book about the case that was published in 2001 — *Tokyo Electric Power Co. Office Lady Murder Case*. Sano [told a reporter](#), "With this case, the Japanese legal system has committed suicide. The ruling was influenced by the unconsciously held racial prejudice of the Japanese against a foreigner from an Asian country to which Japan provides large sums of economic aid. Just as the confused behaviour of Watanabe exposed the dark side of Japanese society, so the unfair treatment of Mainali has exposed the dark sides of the Japanese legal system."

In researching his book Sano traveled to Nepal and interviewed men Mainali lived and worked with in Tokyo. They told Sano that after his arrest they were deported, and several said they told the police that Mainali was with them on the night of Watanabe's murder. With the deportation of those witnesses Mainali was unable to present their alibi evidence during his trial.

Japanese supporters of Mainali paid his wife's expenses to travel to Japan in 2002, and she visited him for the first time since he left Nepal in 1993.

In 2003 Japan's Supreme Court affirmed Mainali's conviction and sentence. Mainali filed an appeal for a retrial in 2005, which was denied.

On July 21, 2011 *The Daily Yomiuri* — Japan's largest daily newspaper — reported

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that the prosecution had [secretly conducted](#) DNA testing of semen recovered from Watanabe's vagina that excluded Mainali as the source. Five days later, on July 26, Mainali filed a petition for a retrial with the Tokyo High Court based on the fact the prosecution had never disclosed that semen had been recovered, and that the DNA tests excluded Mainali as the man who raped and murdered her.

The [Justice for Govinda](#) Innocence Advocacy Group and other supporters petitioned the Tokyo High Public Prosecutors Office on August 4, 2011 to stop opposing a new trial for Mainali and support his release.

Five weeks after Mainali filed his new trial petition the prosecutors disclosed on September 2, 2011 that there were 42 items of physical evidence recovered from the crime scene that had not been DNA tested. Among the untested evidence was a pubic hair found on Watanabe's body. Then six days later the prosecution disclosed that Mainali's trial lawyers had not been provided the exculpatory evidence that his blood type-B did not match the type-O blood type of saliva found on Watanabe's breast. The High Court ordered that the saliva, the pubic hair, and other evidence be DNA tested. Those tests revealed that the semen, the saliva, the pubic hair, and a bloodstain on Watanabe's coat all had DNA from the same unknown male dubbed as Mr. X.

With their expenses paid by supporters of Mainali, his wife, Radha, and his two daughters, Mithila, 20, and Alisha, 18, arrived in Yokohama on June 6, 2012 to visit him in prison, and await the High Court's decision that was expected the next day. Radha [told reporters](#), "I'd really like to take my husband back to Nepal this time. These 15 years have been very tough. But when I talked with my husband, we agreed to take things as they come tomorrow."

In Japan a request for a new trial is governed by the Supreme Court's 1975 decision in the *Shiratori* case, that a new trial should be granted if reasonable doubt exists over a guilty verdict after a comprehensive examination of [old](#) and [new](#) evidence.

On June 7, 2012 the High Court [set aside Mainali's](#) conviction and ordered his retrial based on the new DNA evidence that Mr. X was Watanabe's assailant. Presiding High Court Judge Shoji Ogawa stated:

"Suspicion has arisen that another person might have murdered the woman



Govinda Mainali's wife Radha (center), his daughter Alisha, 19 (left), and his daughter Mithila, 20 (right), in front of the Tokyo High Court after he was granted a retrial on June 7, 2012

and it is assumed a guilty ruling would not have been handed down if the results of this analysis had been presented in the trial. ... Reasonable doubt has arisen over the conviction, which said it was difficult to assume a third person entered the room with the woman, and the [DNA] test results are clear evidence indicating a not guilty verdict should be handed down [to Mainali]."

Mainali was released from prison about 3 p.m. that same day and transferred to a detention facility, since he had overstayed his visa and thus was in Japan illegally.

Japan deported Mainali on June 16, 2012 and he was flown to Kathmandu, Nepal after spending 15 years and 3 months in custody and being separated from family for more than 18 years.

On October 30, 2012 the Tokyo High Court held a retrial of Mainali *in absentia* that lasted 30 minutes. [The prosecution admitted](#) DNA samples of tissue found under the victim's fingernails, semen found in and on the victim, and hair strands on the victim and elsewhere at the crime scene, matched a person other than Mainali and that he was not guilty of the crime.

On November 7, 2012 the Tokyo High Court [announced its ruling](#) that Mainali was not guilty.

During a press conference in Kathmandu after his acquittal Mainali [told reporters](#): "I was forced to undergo 15 years of horrible and torturous time in jail despite being innocent. I prayed to God and asked: what mistake have I committed? God was the only witness of my pleas. Had a DNA test not been conducted, I would have been languishing in jail and probably would have died there."

Mainali's exoneration was abnormal in Japan, which has a 99.8% conviction rate. The Innocents Database only lists [20 exoneration](#)s in Japan since 1945.

The overwhelming majority of convictions are obtained by a defendant's confession. A suspect in Japan can be detained for up to 23 days without charge, there are no rules on the length of an interrogation which are not fully recorded, and lawyers are not permitted to be present during an interrogation. When initially arrested Mainali was denied access to a lawyer, and he was beaten, kicked and pinned against the wall by police officers during interrogations.

After Mainali's acquittal Amnesty International [issued a Statement](#):

"Mainali's acquittal shines a spotlight not only on the injustice he has suffered but on a system which unless reformed will perpetuate violations of international fair trial standards. It is simply not acceptable that the police can act with *carte blanche* powers during interrogations, with suspects routinely tortured or otherwise ill-treated and denied access to lawyers. It is long overdue that the Japanese government ends such abuses if it is to have a justice system worthy of the name. Vital reforms are needed to bring the process into line with international human rights law."

Japan does not have an equivalent of the United State's *Brady* rules that can require a new trial if the prosecution fails to disclose material exculpatory or impeachment evidence to a defendant. In 2005 Japan's Supreme Prosecutor's Office revised its Code of Criminal Procedure to require prosecutors to present a defendant's lawyers with a list of evidence gathered. However, the revised code carries no penalties for violations so it is not a deterrent to prosecutors who withhold evidence.

With his acquittal Mainali can now file a petition for compensation from the Japanese government for his wrongful imprisonment.

It is reported that Mainali is [writing a book](#) about his ordeal with the Japanese legal system, including that he was physically beaten by prison guards, and that the police used forceful interrogation methods after his arrest.

Sources:

Court grants retrial for Mainali, *The Daily Yomiuri*, June 7, 2012

[Govinda Prasad Mainali is innocent](#), yet prosecutors refuse to offer an apology, *The Japan Daily Press*, October 30, 2012

[Nepal man cleared of Japan murder](#) after 15 years in jail, BBC New, November 7, 2012

[Japan: End abusive detention system](#) after murder conviction quashed, Amnesty International, November 7, 2012

[Nepal man cleared after 15 years in Japan jail](#), New York Daily News, November 7, 2012