

“9. Despite unanimity amongst the learned Judges hearing the appeal on the first question on which the learned counsel for the appellant has also not laid much stress it would be appropriate to make the discussions complete to answer the question on the strength of the test laid down by this Court in *State of Bombay v. Kathi Kalu Oghad* (supra). Speaking on behalf of the majority the then learned Chief Justice B.P. Sinha was of the view that the prohibition contemplated by the constitutional provision contained in Article 20(3) would come in only in cases of testimony of an accused which are self-incriminatory or of a character which has the tendency of incriminating the accused himself. The issue in the case was with regard to specimen writings taken from the accused for comparison with other writings in order to determine the culpability of the accused and whether such a course of action was prohibited under Article 20(3) of the Constitution. The following observations of the then Chief Justice B.P. Sinha would be apt for recollection as the same conclusively determines the first question arising. The same, therefore, is extracted below:

“(11).....It is well-established that clause (3) of Article 20 is directed against self-incrimination by an accused person. Self-Incrimination must mean conveying information based upon the personal knowledge of the person giving the information and cannot include merely the mechanical process of producing documents in court which may throw a light on any of the points in controversy, but which do not contain any statement of the accused based on his personal knowledge.....

(12) In order that a testimony by an accused person may be said to have been self-incriminatory, the compulsion of which comes within the prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes the case against the accused person at least probable, considered by itself. A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous, because they are unchangeable; except, in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of ‘testimony’.

State of Bombay v. Kathi Kalu Oghad; AIR 1961 SC 1808