Interpreting POSCO

What is the issue?

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The Supreme Court declined to apply the provisions of the Protection of Children from Sexual Offences Act (POSCO), 2012 to mentally retarded adults whose mental age may be that of a child.

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What is the case?

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- The case before the court is related to the rape of a 38-year-old woman with cerebral palsy.
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- Her mother was concerned about the absence of a friendly and congenial atmosphere before the trial court.
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- She approached the courts for a direction to transfer the case to a special court under POCSO.
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- POSCO law mandates child-friendly procedures and features during the trial, taking into account her daughter’s mental age, which she said was that of a six-year-old.
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What the court said?

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- The court was analysing the question of whether expanding the notion of age is within its remit.
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- It has ruled that it is outside its domain.
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- It noted that there may be different levels of mental competence, and that

those with mild, moderate or borderline retardation are capable of living in normal social conditions.
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- The implication of the ruling is that the onus is always on trial judges to keep in mind the degree of retardation of victims and their level of understanding while appreciating their evidence.
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- It is now up to the legislature to consider the introduction of legal provisions to determine mental competence so victims with inadequate mental development may effectively testify against sexual offenders.
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- POCSO is meant to protect children from sexual offences.
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- To extend it to adult victims based on mental age would require determination of their mental competence.
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- This would need statutory provisions and rules.
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- The legislature alone is competent to enact them. The interference of court would breach the principle of separation of powers.
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Quick Fact

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POSCO Act, 2012

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- The Protection of Children from Sexual Offences (POCSO) Act, 2012 deals with sexual offences against persons below 18 years of age, who are deemed as children.
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- The Act for the first time, defines “penetrative sexual assault”, “sexual assault” and “sexual harassment”.
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- The Act incorporates child friendly procedures for reporting, recording,

investigation and trial offences.
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- The Act provides for stringent punishments which have been graded as per the gravity of offence.
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- Section 39 of the POCSO Act requires the State Governments to prepare guidelines for use of NGOs, professional and experts or persons to be associated with the pre-trial and trial stage to assist the child.
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Source: The Hindu

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